

2001

Daniel J. Armstrong, Jared Armstrong, Taylor
Armstrong by Lorene Armstrong, his guardian ad
litem, v. Glen C. Pickett and John does 1-5 :
Addenda

Utah Supreme Court

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IN THE SUPREME COURT OF UTAH

DANIEL J. ARMSTRONG, JARED
ARMSTRONG, TAYLOR
ARMSTRONG BY LORENE
ARMSTRONG, his guardian ad litem,

Plaintiffs/Appellees,

vs.

GLEN C. PICKETT and JOHN DOES 1-
5,

Defendants/Appellant.

SUPREME COURT CASE No. 20010167

Civil No. 980908711

Judge Homer Wilkinson

ORAL ARGUMENT REQUESTED

ADDENDA VOLUME 1 - Rule 24(11), Utah R. App. P.

APPEAL FROM JUDGMENT OF THIRD DISTRICT COURT
IN AND FOR SALT LAKE COUNTY,
JUDGE HOMER WILKINSON

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UTAH

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IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

DANIEL J. ARMSTRONG,

Plaintiff,

v

GLEN C. PICKETT,

Defendant.

: Case No. 980908711 PI
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:
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:
:

FILED DISTRICT COURT
Third Judicial District

NOV 9 2000

SALT LAKE COUNTY
By *Kerissa Howell*
Deputy Clerk

DAMAGE HEARING OCTOBER 16, 2000

BEFORE

THE HONORABLE HOMER WILKINSON

ORIGINAL

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* * *

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1 SALT LAKE CITY, UTAH; OCTOBER 16, 2000

2 HONORABLE HOMER F. WILKINSON, JUDGE PRESIDING

3 P R O C E E D I N G S

4 THE COURT: The matter before the Court is the case of
5 Daniel Armstrong versus Glen Pickett. This matter comes before
6 the Court on the plaintiff's right, request and right to put on
7 evidence as to the damages. As the Court recalls, the Default
8 Judgment against, was granted against the defendant. He failed
9 to appear at the pretrial. He's also failed to, to answer
10 discovery, and the default is taken on that. Is that correct,
11 counsel?

12 MR. SMITH: I think one correction, he failed to show
13 up for his deposition.

14 THE COURT: Oh, his deposition. That's all right.

15 MR. SMITH: Yes.

16 THE COURT: That's fine.

17 MR. SMITH: And he was represented by counsel at all
18 the appropriate proceedings.

19 THE COURT: Yes, yes that's correct too. That counsel
20 was present, but the defendant had not been present. So we
21 don't -

22 MR. WILDE: Yes, if I could have a brief opening
23 statement, Your Honor.

24 THE COURT: Sure.

25 MR. WILDE: The evidence that we're going to put on

1 will show that on the 7th of January, 1996, the Armstrong
2 family was traveling in West Valley, when Mr. Pickett, the
3 defendant, went through a stop sign. At the time he was
4 inebriated and the evidence will show that his blood alcohol
5 was between .12 and .14.

6 As a result of that collision, at least three members
7 of the Armstrong family suffered damages. Jared Armstrong is
8 21 and currently in Spain serving an LDS mission, received some
9 cuts to his face which have been the subject of some plastic
10 surgery, and that's been revised and the evidence will show
11 they're not, the scars are, will remain with him for the rest
12 of his life.

13 Dan Armstrong, the father, previously had some back
14 injuries and the evidence will show that those injuries were
15 exacerbated by this accident.

16 Most importantly, however, the evidence will show
17 that Taylor Armstrong, who was halfway through the 1st grade at
18 that particular point in time, suffered a traumatic brain
19 injury in that accident. He has been seen by Dr. Aaron Bigler
20 who is one of the preeminent neuropsychologists dealing with
21 traumatic head brain injury and the evidence will show that
22 Taylor suffered a left hemisphere injury. As a result of that
23 he's suffered a substantial impairment to his ability to read
24 and otherwise function and things that require reading.
25 Otherwise, Taylor is a very good student. But the evidence

1 will show there's been a significant impairment, that that's
2 likely to remain him, with him. Dr. Bigler's testimony is it's
3 more probable than not that Taylor will have this injury
4 throughout the rest of his life that will affect his ability to
5 attend college, will affect his ability to obtain work and
6 accordingly, that's the reason we're here today is because of
7 the significant injuries to Taylor Armstrong. His father and
8 his brother kind of come along, probably would have been
9 resolved, but for Taylor's injuries and the evidence will
10 primarily focus on Taylor's problems.

11 MR. SMITH: The evidence will demonstrate this traffic
12 accident that Mr. Pickett had been drinking, but I don't think
13 the evidence will support the, the claims for damages that are
14 being made here. There is some minor facial cuts on Jared, the
15 21 year old. They were advised about six months after the
16 accident and since then there hasn't been any treatment.

17 Daniel Armstrong's prior back injury was fairly
18 severe. There's very little treatment post-accident and adding
19 up the medical expenses for both Daniel and Jared, neither
20 approach the threshold required under the PIP statutes of
21 \$3,000 in necessary and reasonable medical expenses.

22 We'd also dispute the, the [inaudible] dispute the
23 existence of the head injury for Taylor. They'll demon, the
24 school records that exist show that he had some problems
25 reading, that he's worked through most of those problems.

1 Treatment by Aaron Bigler constituted a pre-test visit, some
2 communications with the parents and a day of evaluation.
3 There's been no subsequent treatments, no subsequent efforts to
4 assist Taylor or to follow-up on head injury. There, and this,
5 the accident was in January of 1996. Dr. Bigler didn't see
6 Taylor until June or July of 1999, three years later.

7 There was also a subsequent incident that we have
8 very little information about where Taylor bumped his head and
9 his father called the family physician and he was instructed
10 about what to do for a closed head injury, what kinds of signs
11 to look for, what information should be sought and what the
12 potential repercussions would be. That same information was
13 given to the Armstrongs on the day of the accident when they
14 left the emergency room. It was given to them in regards to
15 Taylor, their son Taylor as well as their son Jared who also
16 had a head injury at the time. It's not alleged at this time
17 he has any subsequent impact from the head injury that Jared
18 received.

19 There was another son who was involved in an accident
20 in Pocatello who suffered a head injury that this information
21 was given to them back in December of '97 and January of 1998.
22 They have had significant amounts of information on closed head
23 injuries. Yet they didn't seek any assistance or help for
24 Taylor until July of 1999, in preparation for this litigation.

25 The school records won't support the claims by Art

1 Bigler that this is a terribly life impacting event or that
2 it's going to have any long term consequences.

3 I don't think there will be any evidence that will
4 support those kinds of claims.

5 THE COURT: Now counsel, I failed to ask you both to
6 identify yourselves for the records. Would you do so?

7 MR. WILDE: Certainly. Robert Wilde for the
8 plaintiffs.

9 MR. SMITH: And Steven Smith representing Glen
10 Pickett.

11 THE COURT: Now, I also note the defendant is not
12 present here today.

13 MR. SMITH: That's correct.

14 THE COURT: Now, counsel, I'll, your approach so far
15 as kind of, oh, surprised me here this morning. I understood
16 that this was a hearing for you to put on the evidence just as
17 a default. It appears that the defendant, counsel is still
18 resisted as far as the damages in this case that, Mr. Wilde,
19 you have a right to a jury in this matter if he's, if this is
20 going to be a complete resisting and cross-examining of all the
21 witnesses and going into this matter.

22 MR. WILDE: Your Honor, obviously counsel believes
23 that there's more left in this case than we do. We understand
24 that his pleadings have been stricken and accordingly we're
25 here for damages and it seems to us that that means that there

1 are no defenses, no affirmative defenses, and so accordingly,
2 the no-fault statute it's not a defense. A causation is not a
3 defense. We're only looking at the amounts of damages, and I
4 have two expert witnesses here, I have a police officer and a
5 toxicologist to establish the level that Mr. Pickett's
6 inebriation at the time purely as that goes to allowing the
7 Court to enter an award of punitive damages, and I think that
8 the Court needs to have evidence on his prior alcohol related
9 conviction and his inebriation in order to appropriately assess
10 the level of punitive damage.

11 But other than that, I think the Court is exactly
12 right. That we're looking solely at the amount of damages and
13 since this is an automobile accident and particularly as it
14 relates to Taylor we're looking at, we're going to ask the
15 Court for a substantial amount of general damages. There needs
16 to be some sort of evidence that's going to allow the Court to
17 understand what's an appropriate amount of general damages and
18 we have the deposition which we're going to read excerpts of
19 Dr. Bigler to address the amount of general damages. But I
20 believe that's exactly right. All we're doing is looking at
21 the amount of damages and all those other issues have been
22 resolved by Mr. Pickett's default.

23 MR. SMITH: Well, we disagree, Your Honor. In case of
24 Allstate v. Ivy, Bear River v. Wall, both in the Court of
25 Appeals and the Utah Supreme Court, it's explicitly stated that

1 a plaintiff who has received recompense through personal injury
2 protection benefits should not even pray for the damages for
3 which they received from the insurance company that's
4 protecting them at the time. They have a, that there's a, and
5 that the statute 31A.2-309, Subsection 6 provides immunity to
6 those individuals who sec - who provide the security necessary
7 required by the statute and that in this case Glen Pickett
8 provided the security required by the statute and therefore is
9 in, he is entitled to immunity from the claims for damages
10 represented by what was paid in PIP benefits. The PIP benefits
11 are paid by the under, by the, by the injured parties insurance
12 carrier and that injured parties insurance carrier has a
13 statutory right of subrogation in arbitration, mandatory
14 arbitration against Glen Pickett's insurance company. Those
15 things have taken place. That it would be inequitable, it
16 would represent a double recovery, and it would be contrary to
17 statute and Utah law to permit them to plead for those damages,
18 to pray for those damage, to recover those damages when that's
19 been done one time already.

20 THE COURT: Well, how do you mean it's been done one
21 time already?

22 MR. SMITH: USF&G, the Armstrong's insurance company
23 has claimed -

24 THE COURT: Oh.

25 MR. SMITH: - submitted a claim against Land Casualty

1 and Land Casualty resolved that claim with USF&G.

2 THE COURT: But you're just talking the PIP payments.

3 MR. SMITH: PIP payments, as far as PIP payments go.
4 Correct. Then under Utah law, Glen Pickett, has immunity for
5 any claim for damages for PIP payments, for PIP benefits that
6 were received by the Armstrongs.

7 THE COURT: Well, are you representing Mr. Pickett or
8 are you representing the insurance company on their
9 subrogation.

10 MR. SMITH: The party's Glen Pickett. That's who's
11 being sued in this case.

12 THE COURT: I know the party's Glen Pickett. But
13 answer my question.

14 MR. SMITH: I'm representing Glen Pickett. His
15 insurance company has retained me to protect his interests.

16 THE COURT: Well, then you're representing the
17 insurance company in a sub-litigation. Are you taking the
18 position here today that you are here to, to minimize the
19 damages in protection of the insurance company under
20 subrogation?

21 MR. SMITH: To minimize the damages against both Glen
22 Pickett and the insurance -

23 THE COURT: Well -

24 MR. SMITH: - and that the insurance company would
25 have to pay. If the insurance company could, they would have

1 revoked coverage and they would have said under non-cooperation
2 provision of the policy you have no coverage, you have no right
3 to a defense, no right to indemnification. Under Utah law
4 that's not available, that the insurance company cannot reject
5 coverage from the Armstrongs, because of their insured's non-
6 cooperation unless there's evidence of collusion between the
7 insured and the claimants. This case we don't have any
8 evidence of collusion between Mr. Pickett and the Armstrongs.
9 But we do believe that there's a right that Glen Pickett has to
10 make the arguments before this Court that would reduce whatever
11 damages he would have to pay. The insurance company has an
12 obligation, statutory, contractual obligation to do that in
13 defending him and that's an obligation that they've undertaken
14 by hiring me.

15 MR. WILDE: But that's not a reduction of damages.
16 That's an affirmative defense. An affirmative defense like all
17 the other aspects of Mr. Pickett's pleadings have been
18 stricken, and so if he has some argument that the medical
19 expenses are too high, or if he has some argument that Taylor
20 Armstrong, you know, doesn't suffer a brain injury, then
21 certainly he's entitled to put that on. But he's not entitled
22 to put on any of the other affirmative defenses he would be
23 entitled to put on. He's not entitled to address comparative
24 negligence or, or the no-fault statute. His affirmative
25 defenses have been stricken, and so all we're here looking for

1 here today is the amount of the damage.

2 THE COURT: Well, as I'm looking at this counsel, this
3 has taken me somewhat by surprise. I, of course your pre-trial
4 and I thought you were just going to come and of course put on
5 evidence to damages and that was it, and but it appears it's
6 more than that. I'm the opinion, just as I'm sitting here and
7 listen to what you say that I think Mr. Wilde is right, that I
8 think the affirmative defenses, as far as the liability is
9 concerned, would not be available to the, to the defendant.

10 I think that the defendant, counsel, is representing
11 the insurance company of their interest under subrogation.
12 That they're the ones that are going to have to pay this and
13 therefore they're entitled to come out and to question and go
14 into anything and any defenses as to damages I think they can
15 raise. I'll, I'll, now when you say comparative, I don't know
16 how you're going to raise the -

17 MR. SMITH: We had not planned on raising any -

18 THE COURT: Okay, I was going to say -

19 MR. SMITH: - in comparative.

20 THE COURT: - get into that because I was getting
21 ready to question.

22 MR. SMITH: And I agree with the Court in that regard.

23 THE COURT: That, that I think that they would be,
24 have the right to question the witnesses and to present any,
25 any defenses of which they could raise as far as the amount of

1 damages are concerned. Now, if I'm wrong in that I'll, I want
2 to hear from you both right now. That's why I said Mr. Wilde,
3 you're entitled to a jury if they're going to go into that,
4 those matters, and to have them hear it and make that
5 determination.

6 MR. WILDE: If in fact we're going to go into those
7 matters we'd like a jury. I don't think that's correct, Your
8 Honor. The insurance company is not a party to this action.
9 If they have provided counsel for Mr. Pickett -

10 THE COURT: Well, let me just talk to you Mr. Wilde,
11 and I'm just ruling off the top of my head, that the insurance
12 company is not a party to this action. Mr. Pickett, Mr.
13 Pickett has a contract with the insurance company to represent
14 him and to protect him. If Mr. Pickett defaults in this
15 matter, I think the, the rights of Mr. Pickett are subrogated
16 to the insurance company for them to come in and to protect
17 their interest as far as this is concerned. Even though they
18 are not a party, they are still the one that's going to be
19 paying at least part of it, maybe all of it, as far as the
20 amounts are concerned, and I think they can raise defenses on
21 the question of damages under the right of subrogation. Now
22 that's my feeling.

23 MR. WILDE: Well, let me respond to that. Let's say
24 that we filed the lawsuit and said Glen Pickett ran over these
25 people and injured them and itemize the general [inaudible] of

1 damages and said, Let's have the Court or jury or someone
2 identify what those damages were. And let's suppose that Mr.
3 Pickett instead of going to his insurance company, had an
4 insurance, forgot about the insurance, didn't realize he ought
5 to go to the insurance company, went to someone who's going to
6 be admitted in this session, the new admittees to the bar which
7 are going to be sworn in on the 18th of this month, and this
8 person looked at this and said ah, tort law. I'm gonna go in
9 and raise the tort defenses, but did not bother to consult the
10 insurance company. Did not bother to read the code and find
11 out about the no-fault statute. Did not do any of those sorts
12 of things and just showed up and argued general tort law. It's
13 pretty clear that we're going to be entitled to get whatever
14 damages come out of that and be able to respond to whatever
15 affirmative defenses that person raises.

16 Now, if in the process, Mr. Pickett did to that
17 attorney what he's done to Mr. Smith, and failed to show up,
18 failed to participate in his deposition and so on, then it's
19 pretty clear that having his answer stricken, having his
20 pleadings stricken, we're going to be able to come in here and
21 just put on the amount of damages.

22 Now I don't see how that differs in any fashion from
23 where we are now, because an insurance company is not a party,
24 and the fact that Mr. Smith is hired by the insurance company
25 doesn't mean he can come in here and represent the insurance

1 company's interest with regards to that subrogation. He's
2 entitled to represent Mr. Pickett's interest, and whatever
3 problems the insurance company's have behind the scene, they're
4 certainly entitled to address. But that doesn't mean that
5 those defenses are still viable after the pleadings have been
6 stricken.

7 THE COURT: Now in your example, counsel, of course
8 the insurance company had no knowledge, they were not brought
9 into it and therefore, it would follow, under my thinking, the
10 insurance company would not be liable for the amount of damages
11 of which were awarded to you because they were never contacted,
12 never brought into this lawsuit of which you proposed.

13 Here the insurance company is present and they're
14 representing their interests under the subrogation. In other
15 words, you may ask for 50 million and, and I grant you that
16 amount. The insurance company has a right to resist that
17 saying look this is not a \$50 million case. This is only a \$1
18 million case and put on the evidence to prove that.

19 MR. WILDE: Well, but see, that ignores the totality
20 of the insurance circumstances. For example, we've got Mr.
21 Pickett here with the statutory minimum policy. That doesn't
22 alter the fact that Mr. Armstrong has an under insured motorist
23 policy for \$300,000, and the, their -

24 THE COURT: What, what you say there is a no, 300,000?

25 MR. WILDE: 300,000 under insured policy, so if the

1 Court awards a judgment against Mr. Pickett -

2 THE COURT: That's against his insurance company.

3 MR. WILDE: That's exactly right, and his insurance
4 company is not here today being represented for exactly the
5 same reason that Mr. Pickett's insurance company is not here
6 being represented because all of those claims are taken care of
7 behind the scenes, after the fact, through inter-company
8 arbitration insurance that they just sort out between
9 themselves, what the subrogation rights are and who gets to pay
10 what.

11 If we read the pleadings from Mr. Pickett, there is
12 no where alleged as a defense the fact that his insurance
13 company has a right to subrogation, because they may well do
14 that, and that's contractual right. But that doesn't fit into
15 this tort case, and the fact that we have Mr. Pickett
16 represented by Mr. Pickett's counsel and those cases he cited
17 are Allstate v. Ivy and they involve insurance companies in the
18 caption of the case, because we had individuals suing the
19 insurance company and insurance companies suing individuals for
20 subrogation and they certainly are big boys and they know how
21 to do that. But that doesn't mean that Mr. Pickett is entitled
22 to have the affirmative defense of the no-fault statute or
23 anything else raised once his pleadings have been stricken.

24 THE COURT: Well, I'm not saying he has the right
25 under the no-fault statute. Well, that could go to damages I

1 guess, somewhat. Well let me hear from Mr. Smith, and I've
2 been arguing your position here and I'm not, I'm not sure where
3 we're going.

4 MR. SMITH: May I approach the bench?

5 THE COURT: Sure.

6 MR. SMITH: I'm going to refer to Page 1,200, down
7 under Keynote number 2, and basically what this talks about is
8 when an individual, an injured individual recovers PIP benefits
9 from his insured, he should not even plead for those damages,
10 and I read from that case. It says, -

11 THE COURT: Well the PIP benefits, they, they're minor
12 though. You're arguing -

13 MR. SMITH: Correct.

14 THE COURT: That, that to me is a minor element of
15 this case.

16 MR. SMITH: Well, it is. However, we believe that if
17 they, that there's still no right to maintain a claim for
18 general damages unless they meet the threshold requirements of
19 the PIP statute. That's a statutory provision that exists and
20 that it would be unjust and unfair to violate their information
21 on statute. It's not ever, it's not listed as an affirmative
22 defense at any point in time. It talks about what an
23 individual's right to recover would be. We think the
24 Armstrongs are, that the damages that would be awarded to the
25 Armstrongs are limited by that statute.

1 THE COURT: And your speaking of the threshold?

2 MR. SMITH: The threshold and the PIP benefits. The,
3 the PIP benefits that they received.

4 THE COURT: And how much is the thresh, how much,
5 we've got two or three defendants here. How many defendants -
6 or plaintiffs, how many plaintiff is the, how many plaintiffs
7 does the threshold apply to?

8 MR. SMITH: I think, in this case it will only apply
9 to Daniel, the father. That he did not -

10 THE COURT: Daniel's father?

11 MR. SMITH: Daniel, the father, the father in this
12 case. That the two boys, that this claim, I guess there's a
13 question on whether or not Taylor has a permanent impairment,
14 permanent injury, but they both received scarring and under the
15 threshold requirements a permanent disfigurement is, I guess,
16 then through the threshold. For Daniel, the father, however,
17 he can not establish that he incurred \$3,000 in necessary and
18 reasonable medical expenses as a result of the accident and
19 that would therefore preclude him from pursuing filing. It's
20 the same reason that none of the other Armstrongs that were in
21 the automobile are here in Court today.

22 THE COURT: So then you are of the opinion they may
23 proceed as far as their other -

24 MR. SMITH: Correct.

25 MR. WILDE: What we anticipate is going to happen, is

1 we're gonna put on our evidence. It's gonna show what the
2 damages are. The Court's going to look at those damages, going
3 to give us a judgment for each of these three people. We
4 disagree with counsel, which is not a surprise, on whether or
5 not there is a permanent injury to, permanent impairment to
6 Daniel Armstrong. However, -

7 THE COURT: Are you alleging there is?

8 MR. WILDE: Excuse me? We allege there is, yes.
9 However, -

10 THE COURT: That's a jury, would be a jury question
11 then.

12 MR. WILDE: That would be a jury question, but that's
13 not a jury question because the pleadings have been stricken.
14 All right? Now, when we get through and get a judgment awarded
15 to each of these people, then as Allstate versus Ivy says,
16 they're not entitled to have a double recovery for their PIP
17 benefits. Now, the good Mr. Pickett obviously is not here and
18 he's obviously's not going to get out a check and write us a
19 check for whatever it is the Court awards up to the policy
20 limits. That check is going to come from Atlantic Casualty,
21 and Atlantic Casualty is going to be entitled to say, Gee the
22 PIP benefits have already been paid and you're not allowed to
23 claim those PIP benefits and we're going to agree with them and
24 say certainly, that's correct, we're not entitled to those PIP
25 benefits. But that doesn't mean we're not entitled to the

1 damages beyond the PIP benefits and it doesn't mean they're not
2 entitled, they are entitled to use the no-fault statute as an
3 affirmative defense because that's exactly what it is, and if
4 we read the answer to the Complaint, and I haven't read it for
5 a while, but I will personally guarantee you that one of the
6 affirmative defenses is the no-fault statute and they're, that
7 has been stricken. We're entitled to go ahead, put on evidence
8 with regards to the damages, let the Court determine what the
9 damages are and proceed. If they want to come back on PIP
10 benefits, they're certainly entitled to do that, at that time.
11 But it's not a defense here today.

12 THE COURT: Well, I agree with Mr. Wilde, Mr. Smith.
13 I think that they can go way beyond PIP benefits and that if a
14 judgment was awarded to them then of course the PIP benefits
15 would just be subtracted for the amount of their award that
16 they claim. I mean from your client.

17 MR. SMITH: And we don't believe that if, if the
18 threshold requirements are not, are not met that they can
19 proceed on a claim for general damages -

20 THE COURT: Well -

21 MR. SMITH: - position and, and to allow them to do
22 so would create an incentive for anyone in an automobile
23 accident to file a lawsuit just in case the person defaulted,
24 whether or not they did or didn't have \$3,000 in medical
25 benefits, whether or not they did or didn't reach the

1 threshold. Once the default is entered then they can recover
2 regardless, and that's the purpose that the statute was enacted
3 to prevent.

4 THE COURT: You may have a point, Mr. Wilde, it is a
5 question for me to decide. We don't have a jury. As to
6 whether the father has met the threshold, either the, in the
7 amount of dollars or, or permanent injury.

8 MR. WILDE: I don't think the, I don't think the issue
9 of the threshold is an issue before the Court. That's been
10 stricken. That's an affirmative defense.

11 THE COURT: Well, I resolve it right now. I'm not
12 sure whether that default - my immediate reaction, Mr. Wilde,
13 is you're correct, but that, that, that, when he defaulted
14 those affirmative defenses he has the right to go out the
15 window but then the insurance company's here on a subrogation,
16 that they have the right under that.

17 MR. WILDE: And they may have the right to deal with
18 subrogation -

19 THE COURT: But I would take the position, I'm going
20 to take the position that the affirmative defenses, as far as
21 the statute is concerned, are stricken through his default. Of
22 course, if you take it up on appeal, then maybe you'll find out
23 I'm wrong. Now where does that leave us? Are we ready to go,
24 or do you -

25 MR. WILDE: We're ready to go.

1 THE COURT: - or do we need a jury, or what?

2 MR. WILDE: We're talking solely about damages and I
3 believe we're ready to go.

4 THE COURT: Okay, now as I indicate, well, I think I
5 indicated to you, this Court has an involvement about, a little
6 about after 11:00, and we have to be finished by then. You'll
7 have to come back about two or 2:30.

8 MR. WILDE: All right, I think that's very possible.

9 THE COURT: Okay, you may proceed.

10 MR. WILDE: All right, now my understanding is that
11 counsel and I've agreed that we're going to deal with a great
12 majority of the exhibits by having this, which counsel and I
13 both have copies of marked as Exhibit 1. It has multiple tabs
14 which are the various documents that we've exchanged and I have
15 a copy for the Court in case the Court would like to follow
16 along as we go.

17 THE COURT: Has Solomon come in?

18 COURT CLERK: [inaudible]

19 THE COURT: Oh, is he. Well I have a criminal matter
20 that I need to take a plea on. I guess it's gonna be a plea
21 isn't it?

22 MR. ?: I'm not sure both Defendants are here, Your
23 Honor.

24 COURT CLERK: One of them [inaudible] -

25 THE COURT: Well, proceed. Let me know when you're

1 ready and I'll see what I can do there too.

2 MR. WILDE: Thank you. We're going to call Officer
3 Jorgen - or Detective Jorgensen.

4 THE COURT: Ma'am, if you'll raise your right hand.

5 JULIA JORGENSEN,
6 having been first duly sworn, testified
7 upon his oath as follows:

8 DIRECT EXAMINATION

9 BY MR. WILDE:

10 Q Would you tell us your name and address please?

11 A I'm Julia Jorgensen. My address is West Valley City
12 Police Department.

13 Q And what do you do for a living?

14 A I'm a police officer.

15 Q And how long have you been so employed?

16 A A little over five years.

17 MR. WILDE: We offer [inaudible] Stipulation, Your
18 Honor.

19 THE COURT: You say you offer it as already being
20 stipulated to?

21 MR. SMITH: I think we've stipulated to everything.
22 At least to, we're not going to object to form and foundation
23 of anything that's [inaudible].

24 THE COURT: Okay, then Exhibit 1, all the exhibits are
25 admitted.

1 (Plaintiff's Exhibit 1 received)

2 MR. WILDE: Thank you.

3 Q (BY MR. WILDE) Where were you working on the 7th of
4 January, 1996?

5 A I was assigned a patrol for West Valley City Police
6 Department.

7 Q At that time did you have the opportunity to
8 investigate an automobile collision involving the parties to
9 this action?

10 A I did.

11 Q Did you have the opportunity at that time to interact
12 with the Defendant Mr. Pickett?

13 A I did.

14 Q All right, would you tell us what you observed?

15 A I was dispatched on an auto accident at 4800 West and
16 3100 South. When I arrived there were two Suburbans that had
17 collided. They were off the side of the road. Several people
18 standing around. Mr. Pickett was sitting on the curb behind
19 his Suburban.

20 Q Did you speak with Mr. Pickett?

21 A I did.

22 Q Did you observe his demeanor and his affect?

23 A I did.

24 Q Would you tell us what you observed?

25 A When I arrived several witnesses approached me,

1 identified him as the driver of the older Suburban and told me
2 they, they could smell alcoholic beverage on his breath. I
3 went over and began speaking with Mr. Pickett. I too observed
4 an odor of an alcoholic beverage on his breath and asked him if
5 he'd been drinking. He told me that he had a couple of beers
6 at his friend's house.

7 Q And did he appear to have been drinking from your
8 interaction with him?

9 A Yes, he did.

10 Q Was any blood taken from Mr. Pickett?

11 A Yes.

12 Q Describe what happened with regards to the taking of
13 the blood.

14 A After my initial investigation at the scene of the
15 accident, I responded with Mr. Pickett to St. Marks Hospital
16 where he was admitted into the emergency room for some injuries
17 that he sustained in the accident and then St. Marks took a
18 blood sample from him and then later on I contacted one of our
19 blood tech's and Officer Kingrey responded and he also took a
20 blood sample.

21 Q All right, and would you examine Tab A of Exhibit 1,
22 the book that's there? Is that a copy of your police report?

23 A That's a copy of the traffic accident report.

24 MR. WILDE: All right. I don't have any other
25 questions for this witness.

1 MR. SMITH: I have no questions.

2 THE COURT: Thank you ma'am. You may step down. You
3 may call your next witness.

4 MS. JORGENSEN: Thank you.

5 MR. WILDE: Call Dennis Crouch.

6 THE COURT: [inaudible] raise your right hand.

7 DENNIS J. CROUCH,
8 having been first duly sworn, testified
9 upon his oath as follows:

10 MR. WILDE: Your Honor, may Detective Jorgensen be
11 excused?

12 MR. SMITH: No objection.

13 THE COURT: She may be.

14 DIRECT EXAMINATION

15 BY MR. WILDE:

16 Q Would you tell us your name and address please?

17 A Dennis, middle initial J., last name Crouch.

18 Q What do you do for a living?

19 A I'm a toxicologist.

20 Q For, by whom are you employed?

21 A I'm employed by the Center for Human Toxicology
22 the University of Utah.

23 Q Okay, would you tell us what a toxicologist is?

24 A Well, there's several forms of toxicologists. The
25 particular type of work that I do involves drug and alcohol.

1 testing, interpretation of results.

2 Q And what sorts of results do you interpret?

3 A Usually blood, plasma and other body fluid,
4 concentrations of drugs.

5 Q And is part of that determining the blood alcohol
6 concentration in individuals?

7 A Yes, it is.

8 Q What have you done to prepare for your testimony here
9 today, what have you looked at?

10 A I've reviewed several records. I have a Toxicology
11 Report from the State Health Laboratory, a copy of the
12 Complaint, a copy of the Answer to the Complaints, a toxicology
13 report from St. Marks Hospital, West Valley City Police
14 Department Reports, St. Marks Hospital, hospital records, the
15 deposition of Kelly Doe and the deposition of Sandra Doe.

16 Q And would you tell us the factors that go in to
17 determining the blood alcohol concentration of an individual at
18 a given time?

19 A Well, actually there are two blood alcohol - alcohol
20 concentrations already determined from the laboratory reports.

21 Q Okay, would you tell us the factors that you as an
22 expert consider in determining blood alcohol concentration of
23 an individual?

24 A Well, I have two reports that tell me what the
25 alcohol concentrations are. I was asked to do a retrograde

1 extrapolation and to predict the dose. And what's involved
2 with that essentially is a knowledge of the type of alcoholic
3 beverage that was consumed, the weight of the individual,
4 whether the individual is a male or female.

5 Q Is that something you do in your profession on a
6 regular basis?

7 A Yes, it is.

8 Q And is that something which you have been trained in
9 doing?

10 A Yes, it is.

11 Q Something that you have experience in doing?

12 A Yes, it is.

13 Q Based on your training and experience and the
14 evidence which has been provided, do you have an opinion as to
15 what Mr. Pickett's blood alcohol was at the time of the
16 collision?

17 A Yes, I do.

18 Q And what is that?

19 A Well, based on the, using retrograde extrapolation,
20 based on the blood alcohol that was collected for the State
21 Health Lab, it's approximately .12 percent. Based on the blood
22 alcohol that was performed by St. Marks Hospital, approximately
23 .14 percent.

24 Q And that's at the time of the collision?

25 A At the time of the accident, yes.

1 MR. WILDE: Thank you. I have no other questions for
2 this witness.

3 CROSS EXAMINATION

4 BY MR. SMITH:

5 Q Did you review the records that indicated Mr. Pickett
6 was injured in this accident?

7 A Yes, I did.

8 Q Okay, what, what factors impact the removal of
9 alcohol from the system?

10 A Actually, the burn off rate of alcohol is fairly
11 constant. It does, can vary somewhat from individual to
12 individual.

13 Q Okay, and what, what factors impact it?

14 A Really not a lot. Somewhat experience with drinking.
15 If a person is an experienced drinker they'll have a higher
16 burn off rate usually.

17 Q Size?

18 A No.

19 Q What about sedation, if someone's sedated?

20 A They would have to be sedated to the point that it
21 would slow down the enzymatic processes. So they'd have to
22 probably be in a deep coma.

23 Q And in this case, the State test showed Glen
24 Pickett's alcohol .06?

25 A That's correct.

1 Q And you mentioned you had a St. Marks Toxicology
2 Report, how did you interpret that information from St. Marks
3 Hospital?

4 A That was a plasma alcohol concentration which is
5 about 15 percent higher than a blood alcohol concentration, so
6 I made that adjustment and then did a retrograde extrapolation
7 back to the time of the accident.

8 Q Okay, and my question is how did you calculate that
9 figure? We tried to get information from St. Marks and nobody
10 could give it to us.

11 A I called their laboratory and asked them, plus I have
12 a copy of the report right here.

13 Q Okay, I have a report that says 131 out of normal
14 range?

15 A That's correct.

16 Q Is that what you have?

17 A Yes.

18 Q Nobody at St. Marks could give me information about
19 what 131 meant. Who did you speak with?

20 A I don't recall the lady's name. I didn't ask her
21 what it meant. I asked her what specimen it was done on.

22 Q Okay, so what does 131 mean?

23 A It means .131.

24 Q Are you sure of that, are you sure that's what it
25 means to St. Marks Hospital?

1 A Absolutely. It's part of my profession.
2 MR. SMITH: Okay, very good. That's all I have.
3 MR. WILDE: No other questions for this witness.
4 THE COURT: Thank you sir. You may step down. You
5 may call your next witness.
6 MR. WILDE: Call Dan Armstrong.
7 THE COURT: Raise your right hand.
8 DANIEL JOHN ARMSTRONG,
9 having been first duly sworn, testified
10 upon his oath as follows:
11 THE COURT: You may be seated.
12 DIRECT EXAMINATION
13 BY MR. WILDE:
14 Q Would you tell us your name and address please?
15 A Daniel John Armstrong. I reside at 2920 Robinwood
16 Drive in Taylorsville, Utah.
17 Q What do you do for a living?
18 A I'm a certified public accountant.
19 Q How long have you been so employed?
20 A Since 1982.
21 Q Do you recall the 7th of January, 1996?
22 A Yes.
23 Q An automobile accident involving your family at that
24 point?
25 A Yes.

1 Q Who was driving the vehicle?

2 A I was.

3 Q Where were you going?

4 A We were going to visit my father and mother.

5 Q And other plaintiff's in this case, beside yourself,
6 include your son Taylor and your son Jared; is that correct?

7 A Yes.

8 Q Were they in the vehicle at the time?

9 A They were.

10 Q Would you describe very briefly what happened?

11 A As we were traveling westbound on 31st South we came
12 to the 48th West intersection. Just as we got there my wife
13 screamed there was a car coming through the intersection.
14 There was one other car stopped in the intersection, or at the
15 stop sign proceeding for the southbound traffic - or northbound
16 traffic. Northbound vehicle. I tried to swerve, put on the
17 brakes, couldn't. We were hit just behind the driver's side
18 door by the other vehicle.

19 Q All right. Physically what happened to you, and to
20 the extent you're aware, to your sons Jared and Taylor in that
21 accident?

22 A I received a kidney punch.

23 Q Okay.

24 A Just behind the, the vehicle hit. Came just beside
25 the back. Hit me in the lower back. Had a bruise across my

1 chest from the seat belt and a lower back injury.

2 Q Okay, what about Jared and Taylor?

3 A When I turned around I noticed that Jared was hanging
4 through the window just behind the driver's side. He had blood
5 spurting from his neck. I couldn't get my door open so I had to
6 crawl back to the very back of the vehicle and crawl out
7 through the broken window that was there to get to my son.
8 When I got to him I pulled a shard of glass out of his throat
9 and blood was, continued to spurt. I put a compress on his
10 throat, undid his seatbelt and pushed him back into the
11 vehicle.

12 Q Okay, all right, let's talk about injuries that you
13 experienced as a result of this. Had you, well, tell us what
14 happened to you. You talked about having a kidney punch. What
15 injuries or damages have you had that you attribute to this
16 accident?

17 A From the kidney punch, nothing lasting. It was
18 apparently gone within a couple of days when I visited my
19 doctor. The lower back injury, the same within a day or so
20 that I was waking up earlier. I had previously had an injury
21 to the lower back and it would wake me up about 3:30, 4:00
22 o'clock. Now it was waking me up at 2:00 o'clock.

23 Q Now you indicated you'd had previous back injury; is
24 that correct?

25 A Yes.

1 Q How did you sustain a previous back injury?

2 A From another vehicle accident.

3 Q Okay, describe for us the difference in your back
4 prior to the time, the 7th of January '96, and after.

5 A Prior to I could sleep longer which was the first
6 thing that was noticeable to me. The pain seemed to last a
7 little bit longer and come more frequently.

8 Q What had you done in the past to deal with your back
9 injury?

10 A I had seen Dr. Soderburg and my family physician
11 about them. They gave me, I also went to therapy who showed me
12 the exercises that I needed to do to relieve the lower back of
13 the pain and injury on that. They had me -

14 Q Describe those exercises.

15 A There would be some leg lifts where I would bring the
16 leg up into my chest and squeeze it into my chest and stretch
17 it out as far as I can, both legs. Then I would turn my body
18 to one side and stretch the back muscles and then the other
19 side and stretch back muscles as well as do some minor crunches
20 where I lift my and arch my back. The other one would be -
21 stand and arch my shoulders forward and then to stretch the
22 back as far back as possible.

23 Q And how did these exercises affect your back prior to
24 the July, pardon me, the January accident?

25 A They worked very well. When it would, when it would

1 flare up, aggravate, I'd get up. Sleeping is the worst part.
2 Because even with that I cannot get back into bed for more than
3 five or six, six minutes, and then I would have to get into the
4 easy chair.

5 Q How often did you have to do these crunches you've
6 just described for us, these exercises?

7 A Prior?

8 Q Prior.

9 A Maybe two, three times a week.

10 Q Okay, now after the accident, did you continue to try
11 the exercises with these exercises?

12 A Yes.

13 Q And did they work?

14 A They did.

15 Q They did?

16 A They did.

17 Q Okay, so they resolved the problem?

18 A No, I just, more frequent. I have to do them every
19 day, many times. If I am working in the back yard and the back
20 starts to flare up I have to sit down and do those same type of
21 crunches, or if I walk, when I go up hunting or up the hills
22 and so forth it may be, when it starts to flare up I may have
23 to do them then.

24 Q Have you found it necessary to do any other sort of
25 treatment or therapy or exercise since the July, or the January

1 '96 accident?

2 A Yes. One of the people who work at the, or go to the
3 spa is a nurse and he suggested that I try do rowing exercises,
4 using the rowing machine.

5 Q Okay, what else have you done?

6 A Also back lifts where they have a machine where I can
7 bend over completely and then lift myself, my upper torso up
8 and do back lifts.

9 Q And was it necessary to do these things before the
10 January accident?

11 A No.

12 Q What residual effects, what, what do you feel on a
13 regular basis that relates back to this January accident?

14 A Repeat that again would you?

15 Q Do you, do you have any pain or discomfort on a
16 regular basis now that you attribute to that accident?

17 A If I do not do those crunches on a regular basis I
18 have some severe pain.

19 Q Okay, how much time do you spend at the gym or the
20 spa, or where you get your exercise?

21 A Doing those particular exercises, about 30 to 40
22 minutes.

23 Q And how often do you do that?

24 A Six days a week.

25 Q Okay, and you didn't do that before; is that correct?

1 A No.

2 Q All right. Now you've indicated you're a CPA. How
3 much time on a daily basis do you spend working?

4 A During tax season it will vary from 50 to 90 in some
5 cases.

6 Q Fifty to 90 what?

7 A Hours per week.

8 Q Per week, okay.

9 A In some cases it goes to more than that.

10 Q How do these, how does this pain affect your ability
11 to work?

12 A Sitting? After about an hour and half, two hours
13 I'll have to get up and do some exercises, move around.

14 Q Did you have to do that before?

15 A No.

16 Q How does this, these injuries affect other aspects of
17 your life?

18 A I still do most everything I was doing before. I
19 just don't do them as well. I take a karate class with my son
20 and many of the things they ask us to do I can't do.

21 Q All right. Let's talk a little bit about Jared. You
22 indicated that in the collision he ended up with cuts and a
23 piece of glass in his neck; is that correct?

24 A That's correct.

25 Q Did you observe any scars in Jared?

1 A Yes.

2 Q Did he have those scars before?

3 A No.

4 Q What was done to deal with those scars?

5 A He was taken to a plastic surgeon to see if those

6 could be removed.

7 Q And were they successful in removing them?

8 A No, not in removing them. They made them a little

9 better.

10 Q Let's talk a little bit about Taylor. Have you

11 noticed any differences in Taylor since the accident?

12 A Yes.

13 Q Describe those for us.

14 A First, before the accident Taylor was a little boy

15 that ran nearly everywhere he went. Loved to run. Immediately

16 after the accident he would not run. I noticed, or we noticed

17 just after the accident that he had forgotten his abc's that he

18 had learned in school. His reading, as we read with him we

19 would read a line and it would have words like "is" and "the"

20 and some of the other words. In the very next line it would

21 have those same words and he would have forgotten what those

22 words looked like, and so reading with him became quite a

23 chore.

24 Q And over what period of time has he had problems

25 reading?

1 A Well, normally, you know, as a first grader he was
2 starting, he was just starting to read. But after that it,
3 he's always had, since then he has, since the accident we have
4 been working with him constantly on his reading and we have to
5 get him started before he leaves for school reading. Once we
6 can get him started on that it makes his reading at school a
7 little easier.

8 Q Now you described, talked about getting him started.
9 What do you mean by that?

10 A In the mornings we will have him read at least 20 to
11 30 minutes in the morning, out loud, either with myself or my
12 wife or one of the other children.

13 Q From your observation how does he do compared to
14 other children at the same age?

15 A We have other children that had been his age and he
16 is behind them.

17 Q All right, now aside from reading, have you noticed
18 any differences in Taylor?

19 A Yeah, his motor skills were a lot different.

20 Q Describe that for us.

21 A Well, again, as I said before, he used to run
22 everywhere where he would go. When I quizzed our family doctor
23 on that he said, Oh, it's just something that he'll grow out
24 of. You noticed at first, when he first examined Taylor his
25 eye-hand coordination was, was off. He would have Taylor

1 follow his finger around as he would move it and you could see
2 that Taylor physically had to think about what he was doing.
3 As Dr. Smith indicated to us that Taylor had, he has to think
4 about running right now, but he'll grow out of it.

5 Q That, that's Dr. Smith?

6 A That was Dr. Smith.

7 Q What's Dr. Smith's specialty?

8 A He's a general practice.

9 Q Okay. Now aside from running and following the
10 finger around, have you noticed any other differences than
11 reading, any other differences in Taylor?

12 A Yes, throwing a ball, kicking a ball, which affects
13 his interaction with other children.

14 MR. WILDE: All right.

15 Your Honor, I prepared a Trial Brief. I'm giving a
16 copy to counsel and a copy for the Court. The reason I'm
17 raising this now is because the exhibits in the trial brief are
18 the three exhibits I'm about to discuss with Mr. Armstrong, I
19 want counsel to have copies of those.

20 Q (BY MR. WILDE) All right, in preparation for your
21 testimony here today, did you have an opportunity to look
22 through the document book which has been marked Exhibit 1?

23 A Yes.

24 Q Did you examine the medical bills that are listed in
25 there for yourself and for Taylor and for Jared?

1 A I did.

2 Q Let me show you what was marked as Exhibits 2, 3 and
3 4, which are spreadsheets which summarize the information
4 that's contained, or pardon me, summarize the medical bills.
5 Do they appear to accurately reflect the bills that are
6 contained in Exhibit 1?

7 A Yes.

8 MR. WILDE: We offer 2, 3 and 4 as illustrative of his
9 testimony on the bills.

10 MR. SMITH: We object, Your Honor, I think the
11 best evidence rule would be what's in the Exhibit 1 itself.
12 There's no need to have an extrapolation on a chart form. That
13 information should all be contained within Exhibit 1.

14 MR. WILDE: Let me respond, and in fact it is
15 contained within Exhibit 1 and this is a synopsis and my
16 recollection of, I believe it's Rule 803 is that a synopsis is
17 appropriate where the underlying records are available, and
18 they are, and he's just testified that he's reflected them and
19 this just saves us about half an hour of having to go through
20 and identify each of those bills, which have already been
21 admitted.

22 THE COURT: Based on that explanation that they are in
23 Exhibit 1 then the Court would overrule the objection and
24 allow, is it 2, 3 and 4?

25 MR. WILDE: That's correct.

1 THE COURT: They be admitted.

2 (Plaintiff's Exhibit 2, 3 and 4 received)

3 MR. WILDE: Thank you.

4 Q (BY MR. WILDE) Now have you incurred costs associated
5 with your exercise?

6 A Yes.

7 Q Describe those for us.

8 A Well, there's the obvious cost of the spa, which runs
9 approximately \$50 a month. Then there's the cost of, the only
10 time that I have available to go to the spa and do this sort of
11 exercise is at 5:00 o'clock in the morning, meaning that I have
12 to get up at 4:45 to go to the spa so that I can be home with
13 my family before they go to school at 6:30.

14 Q Okay.

15 A Which makes me a little bit drowsy towards the
16 afternoon.

17 Q How long have you been having this exercise at the
18 spa?

19 A Since March of '96.

20 Q All right. The time that you've, that's involved at
21 the spa, does that impact your billable time at all?

22 A Yeah, there's times when I'm sure other people
23 wouldn't want me working on their tax returns when I'm really
24 drowsy, and so I have to quit, go home, take a nap.

25 Q Okay, now let's talk about your vehicle. What was

1 the vehicle that was being driven?

2 A A '92 Chevrolet Suburban.

3 Q All right, would you turn to Tab J of Exhibit 1,
4 Exhibit, or Page 274, page stamped 274.

5 MR. SMITH: We'd object to any information being
6 submitted about the value of the vehicle. The fact that Lorene
7 Armstrong was the owner of the vehicle at the time and the loss
8 of the vehicle was compensated by both insurance companies, and
9 there's no actual property damage lost.

10 Q (BY MR. WILDE) Mr. Armstrong, what have you been
11 compensated for the vehicle?

12 A I believe that they sent me a payoff which what we
13 owed First Utah Bank at the time, and I think they gave me one
14 other small check afterwards.

15 Q All right, and so how much was paid to you?

16 A I believe, and I'm just calculating, maybe about
17 \$18,000.

18 Q \$18,000? What was the value of the vehicle at the
19 time?

20 MR. SMITH: I object to the question, lacks
21 foundation.

22 THE COURT: Well, I thought that, these are already
23 stipulated to.

24 MR. WILDE: They have.

25 THE COURT: That's in here.

1 MR. WILDE: It is in there. It says \$27,157.49.
2 THE COURT: You may proceed.
3 MR. WILDE: Thank you.
4 Q (BY MR. WILDE) Page 274 of the exhibits indicates
5 that USF&G calculated the value at \$27,157.49, is that an
6 accurate statement about what the vehicle's worth at the time?
7 A That's correct.
8 Q And you've been paid how much?
9 A I believe approximately \$18,000.
10 Q All right, who paid that?
11 A I believe both checks came from Atlantic Casualty.
12 Q So Mr. Pickett's insurance?
13 A Yes.
14 Q All right. So whatever it is that hasn't been paid
15 you're still owed?
16 A That's correct. A couple of things that are not
17 taken into consideration with the value of the vehicle I
18 believe were the stereo unit that we had put inside the
19 vehicle, as well as the running boards that were put on to it
20 and the Ming finish that was added to it.
21 Q Okay, why don't you turn to Exhibit X or Tab X?
22 MR. SMITH: I don't have a Tab X.
23 MR. WILDE: You don't have a Tab X?
24 MR. SMITH: I only go to R.
25 Q (BY MR. WILDE) Do you have a Tab X?

1 A I do.

2 MR. SMITH: What is it?

3 THE COURT: Counsel, let him use mine.

4 MR. WILDE: Thank you.

5 Q (BY MR. WILDE) Would you look at the documents at Tab
6 X?

7 MR. WILDE: My associate indicates that they were not
8 fixed after [inaudible]. I guess accordingly, you probably
9 were not subject to the Stipulation of the Court and we, how
10 far do you go?

11 MR. SMITH: I've got, mine has got Exhibit R through
12 Page Bate Stamp 607.

13 MR. WILDE: All right, okay, then I need to correct
14 our, my previous proffer to the Court and that is that the
15 stipulation was Exhibit R through 607, which is correct, and
16 Tab S, depositions that, is deposition of Mr. Armstrong, Tab T
17 is deposition of Mrs. Armstrong, Tab U is deposition of Jared
18 Armstrong, Tab V is the deposition of Dr. Smith and Tab W is
19 the deposition, or discovery answers.

20 Q (BY MR. WILDE) Would you look at the documents which
21 are behind Tab X here.

22 A I have.

23 Q Okay, what are they?

24 A The first two are the cost of the running boards that
25 we put on the vehicle.

1 Q And that's in addition to the purchase price?

2 A That's in addition to the purchase price.

3 Q What else?

4 A The next one is the original installation of the

5 mobile TV tuner, the VHS player, the LCD monitor, the AM/FM

6 cassette stereo and the labor involved, and the installation of

7 the amplifiers; the installation of the keyless entry, the

8 alarm and the remote starter.

9 Q All right, and the add-on for the running boards is

10 how much?

11 A The add-on for the running boards was \$631.44.

12 Q And these other electronic add-ons, how much were

13 they?

14 A One was \$3,096.73. The other one was \$298.74.

15 Q All right. Now we had asked you to find expenses

16 associated with Taylor and we asked you to find a bill for

17 Hooked on Phonics?

18 A Yes.

19 Q Did you purchase Hooked on Phonics for Taylor's use?

20 A I did.

21 Q Why?

22 A He was having problems. As I was saying we'd read a

23 word and then he couldn't, wouldn't remember it the next line

24 down. So we, I was hoping that Hooked on Phonics would help

25 him through that.

1 Q All right, and how much did Hooked on Phonics cost?

2 A Approximately \$250.

3 MR. WILDE: I don't have any other questions. Pardon
4 me.

5 Q (BY MR. WILDE) This morning you presented with
6 another document, which I've given to counsel, which is Exhibit
7 5. Would you tell us what that is?

8 A This is the recommendation from Dr. Whitley to buy an
9 orthopedic chair to help my back.

10 Q Did you purchase an orthopedic chair?

11 A I did.

12 Q And who's Dr. Whitley?

13 A Dr. Whitley is a chiropractor that's in the same
14 building we're in.

15 Q What was the cost of the orthopedic chair?

16 A I believe about \$1,100.

17 MR. WILDE: I don't have any other questions for Mr.
18 Armstrong at this time.

19 THE COURT: Object to that, counsel?

20 MR. SMITH: Yes, Your Honor, we do object to that. We
21 don't believe there's any foundation for Dr. Whitley's
22 chiropractic records and when Mr. Armstrong was asked during
23 discovery who his treating physicians were in relation to this
24 accident he never identified Dr. Whitley or Whitley
25 Chiropractic Clinic as having rendered any medical care.

1 THE COURT: Well, I would sustain the objection at
2 this point. I don't even know who the chair's for.

3 Q (BY MR. WILDE) What was the purpose of the chair?

4 A So that I could sit longer.

5 Q What do you mean so you could sit longer?

6 A At my desk and work.

7 Q Is it associated in any fashion with your injuries?

8 A Yes.

9 Q In what fashion?

10 A It gave me more lumbar support in the back.

11 Q So, when you got this, did you discuss with Dr.
12 Whitley your back and the problems you're having with it?

13 A We've talked about it and told him that and he
14 suggested that I get that chair.

15 MR. WILDE: We'd offer as illustrative of his
16 testimony. [inaudible] counsel has foundation problems.

17 MR. SMITH: We object to it as never having been
18 referred to in any of the discovery, not having been submitted
19 and the fact that Dr. Whitley was not a medical care provider
20 that gave him treatment for his injuries received in this
21 accident.

22 THE COURT: Based on that objection the Court would
23 admit it as illustrative of his testimony.

24 (Plaintiff's Exhibit 5 received)

25 CROSS EXAMINATION

1 BY MR. SMITH:

2 Q You had a fairly severe back injury in 1990, correct?

3 A Yes.

4 Q Could you turn to Tab P? Turn to page 522. You went
5 into Cottonwood Hospital and to, for appendicitis, correct?

6 A Yes.

7 Q At that time did you give them a history of your
8 medical condition?

9 A Yes.

10 Q And past history it says car accident, three years
11 ago with L5, S1 disc crush, disc crushed?

12 A I believe that's a misnomer.

13 Q Who provided them that information?

14 A I did.

15 Q Okay. You don't have any idea how they said crushed,
16 [inaudible]?

17 A No.

18 Q And as far as there's no ongoing problems with your
19 kidney?

20 A No.

21 Q Did you tell Dr. Smith that you had blood in urine as
22 a result of this accident?

23 A Yes.

24 Q Okay, and in fact that's a condition that you've had
25 since you were a kid, correct?

1 A Periodically.

2 Q Okay, can you flip over to Page 545? Down to number

3 four, medical history, is that a part you filled out?

4 A Yes.

5 Q And is that your writing where it says some blood in

6 urine, result severe sore throat when child?

7 A Yes.

8 Q Okay, what about up on the next side where it says

9 sleep rest pattern, is that your writing as well?

10 A Yes.

11 Q And that says do you have any problems sleeping and

12 you marked the box yes?

13 A Yes.

14 Q And then you wrote back pain after three to four

15 hours of laying?

16 A Yes.

17 Q Can you go back to Tab A? Very first page. The

18 owner of the vehicle damaged in this accident was Lorene

19 Armstrong, correct?

20 A Yes.

21 Q Okay. She was the registered owner?

22 A Yes.

23 Q She was the titled owner?

24 A Yes.

25 Q Flip over to Tab J if you could. Down on the bottom

1 paragraph, third line up from the bottom, the evaluation, it
2 says the new evaluation on the car is \$27,357.49.

3 A That's correct.

4 Q And the USF&G was going to pay you \$27,157.49?

5 A That's correct.

6 Q Okay, did they do that?

7 A I believe so. I'm not certain.

8 Q Okay. And the \$18,000 came from Atlanta Casualty?

9 A I believe so.

10 Q Okay, and if you flip to the Page 270 - 278, it's a
11 document prepared by [inaudible] Solution Group. Was that
12 evaluation given to you by USF&G?

13 A I'm uncertain as who gave me this.

14 Q Okay, there it has equipment package adjustment,
15 \$3,270. Was it your understanding that that reflected the
16 stereo and the other equipment that was in the car?

17 A No, I believe that included the 4-wheel drive, the
18 power door locks and other things.

19 Q Okay, and in fact you were able to take everything
20 out of that car that you wanted?

21 A Yes. Some did not appear to be very good after we
22 took it out.

23 Q If you could flip back to Exhibit R. These are
24 Taylor's school records. Have you seen those before?

25 A Yes.

1 Q On Page 583?

2 A Yes.

3 Q When he was in first grade in reading he received a

4 B-?

5 A Yes.

6 Q And in the fourth grade he also received a B-?

7 A Yes.

8 Q Okay.

9 A I don't, I don't see the fourth grade. Does this,

10 does this go, oh, Kindergarten through 4th. Okay, yes, uh-huh.

11 Q For 1999 to 2000. In spelling, what was his grade in

12 4th grade?

13 A A.

14 Q What about language?

15 A A.

16 Q Arithmetic?

17 A A.

18 Q Okay. And is it your impression that he's doing okay

19 in school?

20 A He is when we work with him.

21 Q Have you ever seen his SAT tests?

22 A Yes.

23 Q Why don't you flip back to Page 606. Here's the -

24 A There's not a 606 here.

25 Q You're on 606?

1 A There is not a 606 here.

2 Q Is there a Standard Achievement Test? It's given
3 date of testing October 1999, numbered tested 5, count 051,
4 student Armstrong, Taylor M.?

5 A No.

6 Q Okay, let me see if I can find that for you.

7 MR. WILDE: If I may, my book has 2606, I don't know
8 how that happened.

9 MR. SMITH: This the one that doesn't? But the other
10 one's marked up for evidence. I can keep this one if you want.

11 [inaudible]

12 Q (BY MR. SMITH) Do you see down in the concept section
13 down in the bottom left hand quadrant of that page?

14 A Yes.

15 Q How well did Taylor test in his synonyms?

16 A Average.

17 Q What about multiple meanings?

18 A Average.

19 Q Context?

20 A Average.

21 Q How about reading comprehension?

22 A There's nothing there.

23 Q Under initial understanding, excuse me?

24 A Average.

25 Q And critical analysis?

1 A Average.

2 Q Process strategies?

3 A Average.

4 Q Is it your understanding he's average in school, in
5 reading?

6 A No.

7 Q He's getting B minuses?

8 A Yes.

9 Q Okay, and he's test average on the SAT test?

10 A Yes.

11 Q And do you think that accurately reflects his
12 ability?

13 A No.

14 Q Okay. When Jared had scar revision surgery, he
15 basically got that scar revision surgery because he felt like
16 the scars looked like zits?

17 A They still do.

18 Q Okay, and that was, they were raised?

19 A Yes.

20 Q They're not raised any more?

21 A They still are.

22 Q Okay, and you have a photograph of those scars?

23 A Yes.

24 Q Do you have one that was admitted as an Exhibit?

25 A Yes.

1 Q Okay. And he doesn't have any other damages?

2 A No.

3 MR. SMITH: That's all I have, Your Honor.

4 RE-DIRECT EXAMINATION

5 BY MR. WILDE:

6 Q Did you get, did you or did you not get paid the
7 total, or something in the order of \$27,000 for the suburban?

8 A Yes.

9 Q Okay. So as we sit here today, what aspect of the
10 suburban's value has not been paid for?

11 A The add-ons.

12 Q The add-ons, so about \$3,000 plus -

13 A That's correct.

14 Q Okay, all right. Look at Page 606 that counsel was
15 talking with you about. Now you just looked at the bottom down
16 where there's below average, average and above average; is that
17 correct?

18 A Where's this at?

19 Q We're looking at this.

20 A Yes, uh-huh (affirmative).

21 Q Okay, now let's look up here on the top where we're
22 talking about the numerical scores, and it lists national
23 percent - or national average graph percentile rank.

24 A Correct, yes.

25 Q What's he at for reading vocabulary?

1 A Forty-three.

2 Q So that's 43 percentile?

3 A Yes.

4 Q That's seven percent below?

5 A Yes.

6 Q Okay, reading comprehension?

7 A Thirty-four.

8 Q Total reading?

9 A Thirty-six.

10 Q Free writing?

11 A Twenty-seven.

12 Q Science?

13 A Twenty-six.

14 Q Okay, now on the other hand, in math, it appears that

15 he's above average?

16 A Correct.

17 Q Seventy-seven percent, 69 percent, 76 percent.

18 A Correct.

19 Q Okay, so overall, then he averages out at 50 percent

20 or average; is that correct?

21 A That's correct.

22 MR. WILDE: Would you stick that page back in that

23 book? I don't have any other questions.

24 ///

25 ///

RECROSS EXAMINATION

BY MR. SMITH:

Q Turn to Page 598 in that book please. Was this an assessment profile done of Taylor when he was in the first grade?

A It was done in July of '97. I believe he was probably in the second or just getting ready to go into third.

Q Okay, when it said grade level up at the top right hand corner, what grade was indicated on there?

A One.

Q Is he in year-round school?

A No.

Q Would July be at the end of his first grade year?

A It could be.

Q Under the first line of that test, his phonetic analysis, that indicates he's a little below average?

A Which column are you looking at?

Q Under minimum expect - percent correct?

A Yes.

Q And he was norm, average, or right at the number expected correct vocabulary?

A Yes.

Q He was quite a bit above in sight words?

A Yes.

Q He was quite a bit below in context?

1 A That's correct.

2 Q About average in synonyms?

3 A Yep.

4 Q Below average in comprehension?

5 A That's correct.

6 Q Got the right number correct in sentences?

7 A Yes.

8 Q And then between 15 and 30 percent below on detail?

9 A Yes.

10 Q Okay, now flip over to Page 6 of 2, just the same

11 assessment for his second grade level. Under that analysis

12 he's still below?

13 A Yes.

14 Q He's above in structural analysis?

15 A Yes.

16 Q He's actually above in contractions?

17 A Yes.

18 Q Also comprehension detail, antonyms, sequence?

19 A Yes.

20 Q He's below only in phonetic analysis, vocabulary,

21 context?

22 A Yes.

23 Q I want to direct you over to Page 604, which is the

24 same test for the third grade level. Under vocabulary,

25 comprehension, writing process and writing conventions he's

1 above average or more than minimum amount?

2 A Yes.

3 Q And he's right at the, the minimum expected percent

4 correct in listening?

5 A Yes.

6 Q And the only, you received head injury instructions

7 at the hospital on the night of the accident?

8 A Yes.

9 Q You received head injuries instructions when your son

10 was involved in an accident up in Idaho?

11 A Yes.

12 Q And the only time you ever took - and you took Taylor

13 down to be assessed by Dr. Smith?

14 A Yes.

15 Q And Dr. Smith found his neurologic exam was intact?

16 A I'm not sure that, from what he told us, yes.

17 Q Did he give you advice at that time?

18 A Just keep working with him.

19 Q Okay, that's what Dr. Smith said?

20 A Yes.

21 Q Okay, and you never sought additional treatment or

22 assessment until July of 1999 with Dr. Bigler?

23 A There were several more treatments that Dr. Smith did

24 of Taylor.

25 Q Several more treatments?

1 A Yeah, there were times, there were a couple times we
2 called. He was lethargic one time. Of course, he'd been
3 lethargic quite a bit after the accident.

4 Q Okay, let's go to, let's go to Tab H, Taylor
5 Armstrong's medical records, and I'd like to refer you back to,
6 I'm trying to find his records from Dr. Smith, and they don't
7 seem to be in here. There they are. Page 259.

8 A Two fifty-nine?

9 Q Correct. These are Dr. Scott Smith's records and a
10 note from Dr. Glenn Fuller, correct?

11 A Yes.

12 Q That shows a visit on January 27th, 1996, about three
13 weeks after the accident?

14 A Yes.

15 Q The next note is a February 1st note that states you
16 called and spoke with Dr. Glenn Fullerm and he bumped his head
17 again. He's been a little lethargic, is that correct?

18 A Yes.

19 Q And there are no other notes or treatments from Dr.
20 Smith in his records, or from Tri-City Medical Clinic. My
21 question is if you went so many other times to Dr. Smith, why
22 aren't there any records for those visits?

23 A I have no idea.

24 Q Okay, you don't have any bills for those visits.

25 A I don't know that that's not true.

1 Q Okay, you did those tables, correct?

2 A Yes.

3 Q Okay. There are no other bills for Dr. Smith.

4 A I don't see any here.

5 Q If those bills had been incurred, you would have put
6 them in here?

7 A Yes.

8 Q So, you'd only seen one other time by Dr. Smith?

9 A No. That's incorrect.

10 MR. SMITH: [inaudible] that's all I have.

11 FURTHER RECROSS EXAMINATION

12 BY MR. WILDE:

13 Q Do you have any relationship with Dr. Smith, other
14 than a physician and patient?

15 A Yes.

16 Q Why is that?

17 A I prepare his tax returns and I'm also the accountant
18 and advisor for their, financial advisor for their corporation.

19 Q Okay, when you see Dr. Smith in those capacities, do
20 you ever discuss your medical situation with him?

21 A Periodically.

22 Q Would you turn to Page 272 of the exhibit book? Now
23 that appears to be a statement from Diagnostic Radiology
24 Physicians showing that the patient's name is Taylor Armstrong?

25 A That's correct.

1 Q Did in fact Taylor have an MRI on his brain because
2 of your concerns?

3 A He did.

4 Q Did you see anything in Dr. Smith's medical records
5 that indicate that Dr. Smith referred Taylor out for this MRI?

6 A No.

7 Q Have you had any other occasions when things have not
8 appeared in Dr. Smith's records, where you understood you had
9 consulted with him?

10 A Yes. We had his hips x-rayed at American Fork
11 Hospital.

12 Q His being Taylor's?

13 A Taylor's.

14 Q Did you have an x-ray done on you?

15 A Yes.

16 Q With regards to your back?

17 A I did.

18 Q After this?

19 A Yes.

20 Q After the accident?

21 A Yes.

22 Q Would you turn to Page 103? That appears to be a
23 radiology report from LDS Hospital?

24 A Yes.

25 Q And that was done after this accident as a result of

1 [over talking]?

2 A Yes.

3 Q Do you see anything in Dr. Smith's records that

4 indicated he referred this x-ray report out?

5 A No.

6 MR. WILDE: No questions.

7 THE COURT: Thank you sir.

8 MR. SMITH: That's all.

9 THE COURT: You may step down.

10 MR. WILDE: We call Lorene Armstrong.

11 THE COURT: Before you call her counsel, will you

12 allow me to take this pleading in this -

13 MR. WILDE: Yes.

14 THE COURT: [inaudible] plea, Counsel?

15 [Whereupon the court handled other matters]

16 LORENE ARMSTRONG,

17 having been first duly sworn, testified

18 upon her oath as follows:

19 MR. WILDE: Your Honor, before I examine Mrs.

20 Armstrong, I'd like to offer Exhibit 6, which is a copy of the

21 docket report from the Farmington Justice Report. I previously

22 provided a copy to counsel and reflects a 1992 conviction of

23 Mr. Pickett for an alcohol related, alcohol related reckless,

24 and we'd like to offer that pursuant to 902. It shows on his

25 face it came from the Davis Justice Court.

1 MR. SMITH: And we object for lack of foundation.

2 MR. WILDE: I believe that 902 indicates that where we
3 have documents from a domestic court or governmental agency and
4 they show on their face their authenticity, they ought to be
5 admitted.

6 THE COURT: Well, it's not the question of
7 authenticity of the document. The question is whether it would
8 be admissible if this were a trial -

9 MR. WILDE: That's true and we believe they would -

10 THE COURT: - for a prior conviction.

11 MR. WILDE: We believe it would because it pertains to
12 a our claim for punitive damages and shows Mr. Pickett's
13 complete disregard -

14 THE COURT: And I would admit it for the purpose of
15 punitive damages. If I had a jury here, we'd deny it now and
16 then admit it at the punitive hearing.

17 (Plaintiff's Exhibit 6 received)

18 MR. WILDE: Thank you.

19 DIRECT EXAMINATION

20 BY MR. WILDE:

21 Q Would you tell us your name and address please

22 A It's Lorene, L-O-R-E-N-E, Armstrong, 2920 Roberson
23 Drive, Taylorsville, Utah.

24 Q And how are you related to the plaintiffs in this
25 action?

1 A I am wife or mother.

2 Q All right. So you're married to Dan?

3 A I am.

4 Q And you're the mother of Taylor and of Jared?

5 A Yes.

6 Q All right. Were you involved in the accident?

7 A I was in the car, yes.

8 Q All right. Let's talk a little bit about Taylor.

9 Would you describe your observations of Taylor after the
10 accident?

11 A Well, it was, after the accident, in the Spring of
12 '96 that I realized he was not retaining what he had learned in
13 kindergarten and first grade. I made no connection to the
14 accident.

15 Q Where was Taylor in school at the time of the
16 accident, what grade?

17 A He was in first grade.

18 Q So he's about half way through first grade?

19 A Yes.

20 Q How had he been progressing at first grade up until
21 January 7th of '96?

22 A Well, normally as far as I was concerned.

23 Q Describe what that means.

24 A Well, staying on task and being at the same level as
25 the other students, and as my other children had been.

1 Q How was he with reading, reading related skills?

2 A Seemed to be progressing. His teacher showed no
3 indication that there was a problem.

4 Q Okay, after the accident did you notice anything
5 about Taylor that didn't [inaudible] where you were concerned.

6 A Well, he was forget - he didn't know his, I was, he
7 was forgetting his abc's. He couldn't remember what, which was
8 an a, which was a b, which was a c and I thought we, we did all
9 this last year in kindergarten. You knew this.

10 Q In kindergarten did he know his abc's?

11 A Yes.

12 Q Did he know his abc's in the first half of first
13 grade?

14 A Yes.

15 Q So aside from his abc's did you notice anything else?

16 A No.

17 Q Okay. Your husband indicated he seem to notice some
18 difference in activity; is that a fair statement?

19 A Yes, he does more of the activities with them than, I
20 do the school work and he does the activities.

21 Q Did Taylor subsequently have any problems in school?

22 A No. You mean sub, is sub -

23 Q After.

24 A Afterwards. Define this -

25 Q [over talking] after the accident did you notice any

1 problems with Taylor in school?

2 A Yes, we just struggled with reading.

3 Q Describe for us, when you say struggled with reading,
4 what does that mean?

5 A Just being able to, he was very slow. He would know
6 certain words, common words one day. The next he would not
7 know them. Like "it, was, from", and he would interchange
8 "from and with and to", he would just try to guess what he was
9 reading.

10 Q Was that a change from before the accident?

11 A Yes.

12 Q Did anyone suggest to you what you ought to do in
13 order to deal with that?

14 A Well, teachers just tell you to practice.

15 Q Okay, now in Taylor's medical records, your husband's
16 already looked through the records with counsel where Taylor
17 was taken to see Dr. Smith.

18 A Uh-huh (affirmative).

19 Q Why did Taylor go to Dr. Smith?

20 A We just took the emergency room told us to just take
21 everybody for a after visit, like a couple, two to three weeks
22 later to a doctor, to our family doctor and make sure
23 everything was still okay.

24 Q Now in Taylor's medical records there's a note of a
25 telephone call from Dan, your husband, to one of the doctors

1 there indicating that Taylor had hit his head some month or two
2 after that, do you recall what happened on that occasion?

3 A I don't. It's been a long time. All I can think of
4 is that we were still concerned and called and he misunderstood
5 us to thinking that something had happened that day.

6 Q Okay. Describe for us what, what, how many children
7 do you have?

8 A I have seven.

9 Q How old are they?

10 A Twenty-one is the oldest, five is the youngest.

11 Q And you've been involved in the schooling of all of
12 your children?

13 A Yes.

14 Q Describe for us what you do with regards to Taylor in
15 his schooling that's different than what you've done for the
16 other children.

17 A Well, just work a lot harder. Doctor Bigler
18 recommended that we get some transparencies to help him focus,
19 which we did, red and green transparencies. We, because he
20 told us he was two to three years behind, if the teacher
21 requires 30 minutes reading I make sure he gets an hour. I try
22 to double it because I'm hoping that we'll catch up. We try,
23 he told us that he would need to reroute every morning. He has
24 to come up with rerouting his reading and system, and so we try
25 to get that going before he goes to school. So we start him

1 with the reading process in the morning.

2 Q How many of your other children have you read with in
3 the morning?

4 A None.

5 Q How have your children done in school?

6 A They've done very well.

7 Q How does Taylor do in school compared to them?

8 A He, he makes good, he makes good grades and that's
9 because we work very hard with him. Like on, like the spelling
10 grade was an A, and that's because we work hard. The other
11 children would come home with 100 on their pretest on Monday
12 and so we didn't worry about it, and Taylor comes home and we
13 take like five words every day and work hard on those five
14 words. The language he gets an A in because we rent a book
15 from the school. So he reads everything before he gets there.
16 So he's gone through it twice.

17 Q All right. Now you talked about reading with Taylor
18 in the morning. Do you read with him, do you work with him in
19 school work other than in the morning?

20 A Well, yeah, at night.

21 Q Okay, describe for us what you do at night.

22 A We do, either he reads more or, and usually the books
23 that I have gone to the, I usually let the other children get
24 their own library books, but I go back and I get a grade level
25 book that he will feel successful at reading. So I get a book

1 that he can read out loud to me there, or he listens to tapes
2 that are on his grade level so he gets exposed and sees the
3 words on his grade level vocabulary and the speed and the rate
4 that they're reading at. So he gets used to the, how fast he
5 should be reading.

6 Q Okay, now, in your profession as a mother of seven
7 children, have you had the opportunity to review school records
8 and school tests and report cards before?

9 A Yes.

10 Q Would you turn to Tab R in the exhibit book?

11 A Okay.

12 Q Would you turn to Page 589? What is that document?

13 A Well that's a, what they call the SPE, you go in and
14 the student and the teacher and the parent sets goals together.

15 Q All right, now as I look through here it looks like
16 in virtually everyone of those things to celebrate, pardon me,
17 things that need improvement, plan of action, goals, parent
18 support, they all focus on reading?

19 A Yes.

20 Q So you say the teachers have asked you to read,
21 that correct?

22 A Yes.

23 Q You had conversations with the teachers about Tab R
24 and his position in school, his work in school?

25 A I do. We talk quite a bit and we talked, my husband

1 feels very strongly about not -

2 Q But is this typical of the sorts of communications
3 you get with the teachers about what needs to be done for
4 Taylor?

5 A Yes, you mean on the areas that need improvement, et
6 cetera?

7 Q Right.

8 A Yes.

9 Q But it's very typical for them to talk about needing
10 work on reading?

11 A Yes. Yes.

12 Q If you'd turn to the next page, 590?

13 A Okay.

14 Q Okay, there you indicate my child needs help with
15 reading.

16 A Where is it, let's see, oh, yes.

17 Q Academic fluency issue was reading?

18 A Uh-huh (affirmative).

19 Q Reading fluency?

20 A Yes.

21 Q Okay, turn to 591, that's another one of these
22 teacher student contract, I think, is a short term for them.
23 They all address reading?

24 A Yes.

25 Q Turn to 593. What is that?

1 A Well, I've never seen one of these before.

2 Q All right, but it does show percentile scores reading
3 comprehension 1?

4 A Yes, it shows that.

5 Q All right. Now let's turn over to 595, and what is
6 that?

7 A These are their report cards.

8 Q Which grade is that?

9 A This is fourth.

10 Q [over talking]

11 A Fourth, fourth grade?

12 Q [Inaudible].

13 A No, he's promoted so it's third grade.

14 Q All right, and for virtually everything below the top
15 block where we're talking about core issues like math and
16 science and spelling and handwriting, he's all in E for
17 Excellent, is that correct?

18 A Oh, yes.

19 Q All right, and then in reading, he's either
20 satisfactory or satisfactory minus?

21 A Yes.

22 Q All right, and the third trimester comment from the
23 teacher, "be sure to do lots of reading"?

24 A Yes.

25 Q Taylor to doing lots of reading up to that point?

1 A Yeah, we keep reading.

2 Q Okay, turn to the next page. That's another report
3 card; is that correct?

4 A Yes.

5 Q Okay, and Taylor has A's and B+'s in areas except for
6 reading?

7 A Yes.

8 Q And once again the teacher's comments are all "keep
9 reading"?

10 A Yes.

11 Q Would you turn to Page 598? Okay, and that's an
12 assessment profile on the standardized test; is that correct?

13 A Yes.

14 Q All right, down at the bottom it lists the general
15 categories. We have below basic, basic, proficient and
16 advanced.

17 A Yes.

18 Q Where does Taylor fit?

19 A Well, in general, generally overall, or -

20 Q No, down at, down at the very bottom?

21 A Oh, he's in the low basic.

22 Q The low basic. Okay, now if we look at the graph
23 analysis which is on the right-hand side near the top.

24 A Yes.

25 Q On the right hand side of averages or pluses and

1 the left hand side are minuses.

2 A Yes.

3 Q Okay, and Taylor has minuses that go significantly
4 down on three different areas; is that correct?

5 A That's correct.

6 Q If you'd look at Page 601. Okay, that's his
7 elementary reading test for Grade 2. Look at the very bottom.
8 Where does he fit? Below basic, basic, proficient or advanced?

9 A All right, he's advanced.

10 Q Well, at the very bottom of Page 601.

11 MR. SMITH: There, there may be a misnumber on the
12 bottom.

13 THE WITNESS: I've got a math page that has him in
14 the advanced on 601.

15 Q (BY MR. WILDE) Okay, I guess we have them misnumbered.
16 Now look at 602 then.

17 A Okay, he's in basic.

18 Q Have your other children been in basic, or have they
19 been more advanced?

20 A I would say that they've been more advanced.

21 Q And have you - you read more with Taylor?

22 A Yes.

23 Q And if you turn to Page 606.

24 A Okay.

25 Q And his reading vocabulary, comprehension and ...

1 reading, all below average?

2 A Yes.

3 Q Pre-writing, composing, editing, total language,
4 below average?

5 A Yes.

6 Q But his skill in these other areas brings him back up
7 to total test of average; is that correct?

8 A Yes.

9 Q Let's talk a little bit about Jared. Jared had his
10 scars revised by a Dr. [inaudible]; is that correct?

11 A Yes.

12 Q Why was, why did you think that was appropriate?

13 A Well, one of the reasons we went in was he still had
14 glass in those spots and that was irritating. So we wanted to
15 get the glass out, plus reduce any scarring, if possible.

16 Q And did he ever show any indication to you that the
17 scars had any other effect on him?

18 A Well, it was always interesting to come home from a
19 date and either the girl didn't notice at all or that's the
20 first thing the girl noticed.

21 Q And he, so that appeared to be a concern to him?

22 A It did. He'd comment on that.

23 MR. WILDE: I don't have any other questions from Mrs.
24 Armstrong at this point.

25 ///

CROSS EXAMINATION

BY MR. SMITH:

Q Can you flip over to Page 594? This is one of the report cards that you got?

A Yes.

Q This was his report card for the first grade?

A No.

Q Was the second grade?

A Second grade.

Q Second grade. There under term 1, under reading, actually all three terms he'd made good progress; is that right?

A That's what it says.

Q Okay, spelling he made good progress?

A Yes.

Q His tests, what's the, do you know what the Tuesday Read 91 percent is?

A I would imagine that it's a test they gave, some kind of reading test they'd give on Tuesday's. I don't know.

Q He got 91 percent, 83 percent and 85 percent?

A That's what it says.

Q In second grade?

A Yes.

Q And on spelling 93, 92, and 90?

A Yes.

1 Q Then on math he got 96, 90, 92?

2 A Yes.

3 Q Move on to the next page there, that's his report
4 card for the third grade?

5 A Yes.

6 Q And his reading is satisfactory, below satisfactory
7 minus?

8 A Yes.

9 Q The handwriting is all excellent. Spelling is
10 excellent. His language was also satisfactory and a couple
11 satisfactory pluses in the first two terms?

12 A Yes.

13 Q And third term how his general performance went,
14 under the oral language and grammar he got an excellent, third
15 grade?

16 A Well, oral was different than reading.

17 Q He got an excellent there?

18 A Yes.

19 Q And before that, the first two terms, he was just
20 satisfactory?

21 A Yes.

22 Q So he made improvement in some areas, more than just
23 reading?

24 A I think that's what it indicates, yes.

25 Q And his second and third grade teacher, that was the

1 same teacher?

2 A Same teacher.

3 Q And she put a lot of emphasis, emphasis on reading?

4 A Yes. I should say his third and fourth grade teacher
5 were the same. His second grade teacher was not the same.

6 Q Okay. And then let's go to his fourth grade report
7 card on Page 596.

8 A Okay.

9 Q He got B- on the reading all three terms?

10 A Yes.

11 Q A's in language, and an A- in the third term?

12 A That's from doing the extra work, using the school
13 books at home.

14 Q [inaudible] in science in term 1 he got a B+ -

15 A Uh-huh (affirmative).

16 Q Social studies he got a B+?

17 A Yes.

18 Q Second term got a B+ in social studies?

19 A Yes.

20 Q Improved it to an A-? The third trimester comments,
21 "just practice reading all summer", was that something that you
22 discussed with Mrs. Bitner?

23 A Yes, at these SEOP's and all through the year.

24 Q Look back to Page 590 if you could please. At that
25 point Taylor had an interest there, my child is interested in

1 karate, computers. Can you read what the, what else is written
2 down there?

3 A And some form of ball. He always wanted to play
4 ball, but he wasn't good at it.

5 Q And the only indication that you had any, did you
6 indicate having a concern that he had a learning problem on
7 this form?

8 A I just knew he was behind in reading. I said reading
9 efficiency.

10 MR. SMITH: Okay. That's all the questions I have.

11 MR. WILDE: I have no further questions for Mrs.
12 Armstrong.

13 THE COURT: All right, you may step down.

14 Do you have further witnesses counsel?

15 MR. WILDE: I don't, Your Honor, but I would like to
16 read to the Court briefly from the deposition of Dr. Bigler who
17 is the neuropsychologist and this is, we'll be through by, I
18 said briefly.

19 THE COURT: [inaudible] briefly.

20 MR. WILDE: Thank you. We took Dr. Bigler's
21 deposition and if the Court would like to follow along on page
22 427 of the exhibit book. I was asking about, he indicated that
23 Taylor had a definite loss of consciousness. Line 9 I said is
24 that significant?

25 He said yes, that's important, that is significant.

1 Why is that?

2 Well, the way one defines head injuries by certain
3 facts. One may be the physics of the injury. Another may be
4 the features, the actual state of the patient [inaudible] after
5 the accident. Loss of consciousness or confusion defines an
6 alteration of the level of consciousness and that is definitive
7 for traumatic brain injury. Also the presence of what is
8 referred to as post-traumatic amnesia is another defining
9 characteristic, and in children post-traumatic amnesia is often
10 difficult to establish because some of their limited cognitive
11 development, especially earlier in childhood. But in this case
12 there was a positive loss of consciousness and that is
13 definitive for brain injury.

14 On Page 428 we move down to the 7th.

15 What else did you determine here?

16 Well, the other has to do with appearance and notice
17 with regards to the child's behavior, and they insert there was
18 some eye-hand coordination that he was initially in quotes
19 "forgetting his abc's", and then he goes on to comment that
20 this is, learning problems are common, are a common difficulty
21 that children encounter who've had a traumatic brain injury.

22 Down to Line 19. Anything else on the last page he's
23 going through his diagnosis, significant in your diagnosis of
24 Taylor.

25 Well, prior to the accident he was in good health.

1 negative family history for medical problems and the child had
2 been up, up to the time of the accident doing well within
3 normal limits.

4 We asked him on Page 429 what he did. He said we
5 administered a wide variety of neuropsychological tests.

6 Is there they're significance to still experiencing
7 these problems three and a half years after the accident?

8 Yes. That's an indicator that there are residual
9 effects of the head injury.

10 We move over to Page 430. There he's describing
11 what's going on with Taylor. The left side of the brain is the
12 language hemisphere in most people who are right handed, and so
13 with the kind of presentation for language based problems and
14 that in fact is what showed up on his testing, that his verbal
15 intellectual score was lower than his non-verbal. He had basic
16 reading, he had basic reading and spelling problems with intact
17 math ability, and other parts of the neurologic,
18 neuropsychological testing were also indicators that suggest
19 more of a left hemisphere type of problem in this child.

20 We go down to the bottom of the page at Line 21.
21 Well, his verbal IQ was 89, which is average, but in the low
22 average range. In contrast, his performance IQ was 108, which
23 is in the above average range. That's a 19 point difference.
24 That's beyond the standard deviation. So statistically, that
25 approaches significance meaning that this deviation is

1 significantly different from what you would normally expect to
2 see.

3 I asked is there something one would normally
4 attribute to a brain injury? Is that something one would
5 normally attribute to a brain injury?

6 He said no, not in and of itself but when you start
7 putting together different elements of history, the child's
8 performance on testing, then it comes together in a way that
9 suggests there's a left hemisphere injury.

10 Can you describe for us the difference between a
11 verbal IQ and a performance IQ?

12 It's quite straight forward. Verbal IQ is based upon
13 test. It's his language. The performance IQ is [inaudible]
14 require much in that way, and some we don't require language at
15 all to complete a test. They're often considered more what we
16 call visual/spacial test, and this gives us a way to compare
17 verbal and non-verbal skills. The verbal skills tend to be
18 more left hemisphere oriented and non-verbal skills are more
19 right hemisphere oriented.

20 We go on and he talks at the top of Page 11 about the
21 other test he gave, the PPVT. The PPVT is the Peabody Picture
22 Vocabulary Test. It's a nice test they use in children like
23 this, because what it's doing is it's testing the patient's
24 ability to name, not really name, to point to the correct
25 object when given a choice of words. So it's primarily based

1 on visual processing and identification of a picture, and
2 responding to a question as to a word, and to what picture
3 would most be appropriate with that word. So it has elements
4 of both visual and verbal. What this tells me if you don't
5 require the child to read the item or to visually process the
6 language element of the item he can visually process just fine
7 and is not having difficulty with that aspect.

8 So when we look at the other tests, such as the
9 reading performance, spelling performance, and certain aspects
10 of verbal, intellectual ability, like his ability to do verbal
11 analogies and his overall verbal vocabulary comprehension, all
12 of these scores are lower than we would expect to see. But the
13 Peabody Picture Vocabulary Test is actually considerably above
14 average, which is more like his performance IQ.

15 So what does this tell us, how does, how is this
16 significant to what happened to Taylor here?

17 It tells us, well if we go back and look at the
18 problem here, it's more of a problem of reading, spelling,
19 verbal analytic processing. It's not a problem of visual and
20 visual verbal processing.

21 So we asked him about the WRAT.

22 Well, that's the Wide Range Achievement Test, the
23 revised edition.

24 And what did the test results on Taylor tell us

25 That a standardized test of basic academic skills, WRAT

1 recognition, spelling and mathematics, he's behind in reading
2 and spelling.

3 Okay, what else did you see in your report?

4 Well, the child also had tests of memory function
5 given, and he did okay on the visual parts of the memory. In
6 fact his test of the memory and learning he had a non-verbal
7 memory index of 108, similar to what his non-verbal IQ score
8 was. But the verbal components are lower, and on the test, the
9 California Verbal Learning Test, his initial recall on the
10 words was quite low. He did okay with the recognition element.
11 But the initial trial recall was a problem, and again, I
12 believe this is consistent with what we saw in the other parts
13 of the testing, where verbal memory is not as good as visual
14 memory, and in fact visual memory we do not find a problem.

15 Now how do all of these findings and things indicate,
16 affect, indicate to affect Taylor's future and his ability to
17 function?

18 Well, I believe he has some verbal learning problems
19 as a consequence of the head injury. With children we know
20 that maturation problem will develop - with the maturation
21 development improve their lot, but we do not know with this
22 type of brain injury, and there may be permanency to the
23 deficit in the effect that he may not get back to the previous
24 potential.

25 Down to the paragraph at the bottom of the page. If

1 these problems persist he will likely not be successful in
2 college, likely will not be able to pursue a variety of
3 technical jobs at positions and will require, that require any
4 level of complex verbal processing, reading, spelling, critical
5 writing skills [inaudible], and so this, so this may dictate
6 the kinds of jobs and professions, vocation he is actually able
7 to pursue.

8 And then we ask him is there any way to quantify the
9 probability that these problems will continue to exist?

10 An important answer, well I think it's more probable
11 than not that they will continue.

12 Over on Page 6, 437 we ask him would spending
13 additional time with Taylor would be something that they should
14 do, speaking about the parents?

15 Yes, I mean all the typical stuff that you do with a
16 child is good, positive and should be done.

17 And so that's in fact exactly what the Armstrongs
18 have done.

19 Over to Page 439 at Line 11. At the, as I have
20 outlined there will be three areas where there are typical
21 problems with children who have a head injury. One is
22 increased neuropsychiatric. That means there are higher
23 frequencies of depression, heightened anxiety type disorders
24 and stress disorders that occur in individuals who had a head
25 injury.

1 The second is there is an increased risk for learning
2 disabilities and learning problems of kids who, of kids who had
3 a head injury, and last is, but not necessarily meeting the
4 level of standard in neuropsychiatric disorder where there is
5 actual treatment for anxiety, depression, stress for the kids
6 with head injuries tend to be more impulsive, problems with
7 judgment, problems with ability to sustain attention and
8 concentration.

9 MR. SMITH: I'd like to object to the passage that he
10 just read, Your Honor. It's irrelevant. It talks about
11 children with brain injuries in general. It's not specifically
12 talking about Taylor in this particular case.

13 MR. WILDE: Well -

14 THE COURT: The objection's noted for the record, but
15 the, it is in evidence, of course. It, it's noted.

16 MR. SMITH: Thank you.

17 THE COURT: How much longer counsel? I'm leaving in
18 about two minutes.

19 MR. WILDE: I'm, let's see if I've got any other red
20 lined here.

21 If we can go to 445 at Line 15. The test results
22 indicate to you that Taylor was having problems. What were
23 those problems?

24 Well the testing where you compare verbal and non-
25 verbal abilities show that his verbal abilities in reading,

1 spelling, vocabulary use, verbal comprehension were all down
2 lower.

3 Down from what?

4 Down from his non-verbal abilities. His non-verbal
5 abilities were in the high above range, being borderline - to
6 [inaudible] borderline, low superior range where his verbal
7 abilities were all in the low average, even low borderline.

8 Then there's one last section I think is very
9 important for the Court which deals with coping and
10 compensating. Page 547. This is the response to a line of
11 questioning about compensating and coping with these problems.
12 It says, a general proposition would be correct, wouldn't it,
13 that having less education and [inaudible] sophistication would
14 ultimately, in the general scope of things, equate to less
15 income?

16 Answer: yes.

17 Now in fact Taylor may be able to work and do some
18 work around what you've talked about. It sounded like he would
19 need to be doing additional sorts of things that he would not
20 have had to do, but for this injury, in order to compete on a
21 level with his peers.

22 That is correct.

23 Well, from what you've said, would it be fair to
24 characterize this situation that he is more probably than not
25 permanently impaired?

1 Answer: Correct.

2 And the fact that he can learn to compensate for some
3 of these problems does not mean he's not impaired?

4 That's correct. When I lecture on this the analogy
5 that I also use, which I think is good straight forward analogy
6 is the run analogy. I just came here from Provo this morning.
7 I depend on I-15 to get here. If I-15 is open I can get there
8 fast and efficiently, but if there's a major collision and I
9 listen to the road report I may actually go through Heber and
10 swing up and catch Interstate 80 and come on in and get her
11 faster than I would have by coming in on I-15, the direct
12 route. But never as fast as I-15 when it's open. The brain's
13 the same way. It has this lattice work of different pathways
14 you can go from point A to point B. Sometimes in almost an
15 infinite number of ways. But there's always a primary pathway
16 that is the best one to take, the fast and efficient pathway.
17 If that is the one that is damaged, there are ways to
18 compensate. But they're never as good as the direct route.

19 And then on Page 38 at Line 14 he talks about this
20 impairment. Well, this would be classified as a minor
21 traumatic brain injury. The only qualifier you have to put
22 with that is you can have a - you can have mild problems that
23 have monumental difficulties with them, but in a scope or range
24 this is a mild head brain injury. Thank you.

25 MR. SMITH: One minute.

1 THE COURT: Say it. Do you [inaudible] wish to read
2 something?

3 MR. SMITH: Yes.

4 THE COURT: Well, okay, I'll see you at, about 2:15.

5 MR. SMITH: Very good. Okay.

6 THE COURT: Thank you counsel.

7 BAILIFF: Court is in recess.

8 [Whereupon a recess was taken]

9 BAILIFF: Please be seated.

10 THE COURT: You may proceed when you're ready.

11 MR. SMITH: Might take two minutes now, but it won't
12 take me much longer than that.

13 THE COURT: Oh, really?

14 MR. SMITH: In regards to Dr. Bigler's testimony,
15 there are a couple of provisions, of course, in his deposition
16 I think are extremely important to the Court, and the first one
17 is on Page 32 of his deposition, it's Bate stamped Page 463,
18 beginning on Line 2. And the question is: Do you know what
19 Taylor's permanent problems are going to be at this point in
20 time?

21 Answer: I don't know exactly what Taylor's problems
22 will be. As a group children who have these problems can end
23 up with less education, end up, end up with less job
24 sophistication.

25 Question: Can you say whether Taylor will end up

1 there? Do you have an opinion about that?

2 Answer: I can't tell you that.

3 The next portion is two pages further on, on Page 34
4 of the deposition. It's Bate stamped page 455, beginning on
5 line 4. The question is: So is your understanding when you saw
6 him in 1999 he was worse off mentally than he was before the
7 accident?

8 Answer: Well, no. You have to be careful how you say
9 that, because even though he was behind he was still at second
10 grade level, which is he wasn't in the second grade when he had
11 the head injury, so you know it was not that he was worse, but
12 he was behind where he should be, given his age.

13 And the next provision is on Page 35 of the
14 deposition. One more page back, beginning on line 5 and the
15 question, and there's no way to tell what that plateau will be
16 for Taylor?

17 Answer: Well, there is.

18 Question: Right now?

19 Answer: Not at this point.

20 And those are the provisions of Dr. Bigler's
21 testimony that create questions regarding causation and

22 MR. WILDE: I think that the section that counsel
23 read to us from Page 34 needs to be completed. It would begin
24 on Line 13, Page 34, Bate Stamp 455. "So let me see if I
25 understand this correctly. It's your opinion that the accident

1 caused him to move backwards and get behind where he was."

2 Answer: His age made peers, that's correct, and then his
3 progression from that point, he's remained behind his peers,
4 but continued to progress. That's correct. And that will
5 continue in the future. We know regardless of whether this
6 brain injury or idiopathic learning disability and certain
7 skills do get better over time. They may stay behind and may
8 plateau earlier than is normally the case. They usually do get
9 better and then you have this absolute leveling off and a
10 plateau is reached that is insurmountable thereafter.

11 MR. SMITH: Nothing else.

12 MR. WILDE: I was out reading it to the Court. I
13 would like to cite the Court two pages, 7 and 9 through 10 of
14 Dr. Bintrup, the plastic surgeon's statements or deposition in
15 which he indicated that the revision to the scars that remained
16 on Jared been complete and they're as good as they're going to
17 get and that the scars will likely remain with him over life,
18 and we rest.

19 THE COURT: Okay.

20 MR. SMITH: We have nothing else, Your Honor.

21 THE COURT: Okay, counsel, now where you going then
22 from here? What do you expect now?

23 MR. WILDE: I'd like to bring up some closing argument
24 to the Court.

25 I think it's clear to all three of us who've been

1 admitted to the bar here that this particular case would have
2 been a great jury case. We're now dealing only with damages.
3 If I may draw the Court and counsel's attention to this chart,
4 we have three plaintiffs and we have three varieties of
5 damages. The evidence before the Court shows that the
6 specials, the medicals in this case for Jared are over \$2,700.
7 For Dan they're over \$3,800 and for Taylor they're over \$7,000.

8 Generals for, or for Jared, we have his involvement
9 in a wreck which was sufficiently powerful to destroy a
10 Suburban, which Chevrolet will tell us is the largest, most
11 powerful vehicle on the road. We have permanent scars. We
12 have his mother's testimony about the embarrassment.

13 As I've talked to my clients about this, we don't
14 know that despite the fact that I come here to Court to try
15 cases and Mr. Smith comes here to Court to try cases, the
16 person who in fact who has tried more of these cases than
17 anyone else is the Court, and accordingly, the Court is
18 familiar and knows where this case sits and we're comfortable
19 with whatever the Court believes to be an appropriate amount of
20 general damages for Jared based upon the injuries he suffered.

21 We have included a box for punitive damages.
22 Obviously, this is a punitive damage case, but there's not a
23 lot of point in going after major punitive damages. But we
24 think the Court ought to address some punitive damages
25 According to Crookston, the elements that need to be shown for

1 punitive damages are the relative wealth of the defendant. We
2 don't know that because Mr. Pickett hasn't bothered to grace us
3 with his presence, and so we think he's estopped from claiming
4 about that particular element in the Crookston elements.

5 The nature of the alleged misconduct, we have Mr.
6 Pickett driving at one and a half times the legal limit. We
7 have his second alcohol related infraction in four years.
8 Obviously he doesn't get it. He doesn't understand.

9 The effect of the law, the effect thereof of the
10 lives of the plaintiff. If we look at what's happened to
11 Taylor, there's not much question that this is something that
12 has been devastating in his life.

13 The probability of future recurrence of the
14 misconduct. Well, he was arrested for driving while he was
15 drunk once before. Didn't seem to make a dent.

16 The relationship of the parties. I believe that
17 there the Supreme Court is talking about whether there's
18 something that caused these people to be angry with each other,
19 caused the defendant to do what he did. There clearly is not.
20 These are just people on the street. There but for the grace
21 of God go you or I, or any of the rest of us, and accordingly
22 we think punitive damages would be increased based on that, and
23 the amount of actual damages awarded.

24 Now the actual damages, we're not talking about just
25 the specials, we're talking about the generals as well. We

1 think all of these argued for appropriate punitive damages and
2 since we think they're an issue, but we don't think they're
3 something that we're going to stand here and tell the Court
4 what you ought to do, since you have a lot more experience in
5 these particular cases than we do, we're just going to suggest
6 that whatever you think is appropriate.

7 If we look at the general damages for Dan, we have
8 his back problems which are exacerbated. We have the effects
9 that those have on his work and on play. Once again, we think
10 it's appropriate that you fill in the numbers, and with all the
11 punitive damages we think that's appropriate.

12 I don't believe and I don't think counsel believes, I
13 don't think anyone here believes that we would be here today
14 but for the injuries that Taylor Armstrong suffered. We've got
15 over \$7,000 in medicals and specials. If we look at the
16 generals, look at the damage that he's suffered, we have the
17 testimony of Dr. Bigler who says that it is more probable than
18 not that he will continue to suffer these same sorts of injuries
19 throughout his life.

20 Now that's an interesting phrase, because more
21 probable than not pretty clearly defines the burden of proof.
22 It's more probable than not that there's that injury and that
23 it's going to continue and he's going to be damaged. The left,
24 left hemisphere of his brain has a permanent impairment. Now
25 we, if we want to quantify what that is, we can merely go back

1 to Dr. Bigler's deposition on Page 9 where he talks about the
2 fact that Taylor now has an intellectual, verbal intellectual
3 IQ of 89, which is below average. Compare that to his
4 performance IQ which is 108, and that normally we would
5 anticipate that those two would be about the same. So we can
6 in fact pretty much quantify what has been taken from Taylor by
7 the actions of Mr. Pickett. About 19 IQ points off the verbal
8 intellectual IQ that area which requires him to do higher level
9 functions, that area which allows him to read. I guess the best
10 description is that Mr. Pickett in his actions left Taylor the
11 ability to function, but took from him the ability to excel.

12 In his deposition Dr. Bigler says that Taylor is not
13 likely to be successful at college. He's not likely to be
14 successful in technical, high paying jobs, and I think we can
15 fairly well presume that Taylor would have been, but for what
16 has happened to him in this collision. All we need to do is
17 look at his siblings. He's got six siblings, all of whom are
18 outstanding performers, without having the benefit of reading
19 in the morning, reading in the night. "Please follow up on the
20 reading", and that's exactly what they're doing. Because that
21 is all that can be done for Taylor at this point, essentially.

22 Now I think we all understand --

23 THE COURT: [over talking]

24 MR. WILDE: Excuse me.

25 THE COURT: Does Taylor have any problems before the

1 accident?

2 MR. WILDE: No. I think we all understand that if we
3 had brought Taylor in here in a wheelchair or on a bed that
4 this would be a seven figure case. That's not happened.
5 Because that aspect of Taylor's life which is taken from him by
6 Mr. Pickett is not something that we can physically see. This
7 is after all a closed head brain injury. He is nonetheless
8 damaged and disabled in a very real way, and we can actually
9 quantify it. Dr. Bigler has quantified it in IQ points.

10 So when the Court considers the general damages for
11 Taylor, we believe that you ought to factor in when he does go
12 to college he's going to have to study harder than anyone else.
13 He's not going to be able to work and he's going to need to
14 have money for college. So those are clearly damages that he's
15 going to experience in the future. According to Dr. Bigler,
16 when he's in college he's probably not going to excel, and
17 after he graduates he's going to have a lower paying job and
18 accordingly he's going to have lost future damages which we
19 know exist, though we can't necessarily quantify the numbers at
20 this point.

21 There's also testimony about the quality of Taylor's
22 life. There are things which he cannot physically do, which
23 other 11 year olds can. He can't play ball because he doesn't
24 know which hand to catch the ball with. Instead of being
25 involved in team sports, he's got to focus his life on an

1 individual sport, on karate, or something else that's not going
2 to be as dangerous.

3 THE COURT: [inaudible] experience, as far as what his
4 motor skills were playing ball prior to the accident?

5 MR. WILDE: He did play, he was able to play prior to
6 the accident.

7 THE COURT: How old was he?

8 MR. WILDE: He was what, five.

9 THE COURT: So he wasn't into any sports yet?

10 MR. WILDE: My recollection is he was playing soccer.

11 THE COURT: Did he start soccer at five? What is -

12 MR. WILDE: So -

13 THE COURT: - what was his success, do you know?

14 MR. WILDE: He was an average, healthy, active little
15 boy. So now, not only can he not physically do these things,
16 which he could have done be, which he did do before, would have
17 been able to do now, he has to be more careful what he does.
18 So we have a difficult time putting a number on what that is.
19 If we were to, like I say, if we were to have him here in a
20 wheelchair, or to have a day in the life, maybe this would be a
21 seven figure case. We don't, it's not that sort of case. But
22 it's very real, the damage exist, it's quantified, and we
23 believe that the Court in general damages ought to award Taylor
24 Armstrong \$350,000 for that which has been taken from him,
25 which he had the ability to excel, where now he only has the

1 ability to function. Thank you.

2 MR. SMITH: We don't dispute that Jared was involved
3 in the accident, that he received some scarring, but the
4 scarring that he received is minimal. It's been taken care of
5 by plastic surgery revision. The pictures which I don't
6 believe were ever pointed out to the Court speak for
7 themselves. The before revision pictures on Page 148, Bate
8 Stamp 148, and I don't, I wasn't able to come to locate the
9 after revision photographs. But what the picture show is
10 there's a rather insignificant scar along Jared's jaw line on
11 the left hand side that is rather difficult to see. There was
12 some pain, but not much. No ongoing problems as a result of
13 scarring, and the general damages likewise would be fairly
14 minimal. We don't dispute that Jared's medical expenses were
15 \$2,778.78. That amount, however, was all paid for by the PIP
16 carrier that we discussed earlier. We don't believe he's
17 entitled to recover those amounts again in this action.

18 I would like to spend a little time on Daniel
19 Armstrong's claim for damages. We don't dispute that Daniel
20 Armstrong incurred \$560.75 in necessary medical bills as a
21 result of this accident. I would, however, like to go through
22 some of the claimed expenses that he's listed on the
23 spreadsheet for himself and beginning with what is dated as the
24 18 November '96 MRI for his lumbar spine, that is an erroneous
25 date. The actual date on the MRI was 11/18 of 1997, and that

1 is important for that MRI was, what page is it on? Is in the
2 section on Dr. Smith's records. His MRI for the low back was
3 22 months after the accident, and the reasons that the 1990,
4 the 11 of '97 MRI, and this is on, this is on Page 522, Bate
5 stamp 522 of Exhibit 1, the reasons that the November 1997 MRI
6 fees are not related to the accident are fairly simple and
7 straight forward and they're well documented. In that record
8 on Page 522 it clearly indicates that there was a crushing, a
9 preexisting crushed disc injury at L5, S1. This is a serious
10 injury. He reported, personally reported to Cottonwood
11 Hospital in January of 1993 on page 545 of Exhibit 1 that he
12 could only lay for three to four hours without having back
13 pain. He also had been treated by various doctors for that
14 condition and been advised to exercise. An additional note
15 that indicates the degree of his back problems is on Page 95,
16 Bate stamp 95, that his regular doctor at Tri-City Medical
17 Clinic treated him for low back pain and identified as possible
18 disc disease. Again, this is three years before the accident.

19 Perhaps most importantly, however, are the medical
20 records that followed the accident. Those medical records are
21 on page 37 where the, the hospital admission records, they talk
22 about that he was treated for pain complaints, in regards to
23 his left [inaudible] contusion, left clavicle, left arm, and
24 left renal contusion. He was not treated for any low back
25 pain. The next day he went and saw his own family doctor, Dr.

1 Scott Smith and on Bate stamp Page 19, or on Page 93, he was
2 treated by Dr. Smith for tenderness over the lower rib cage and
3 right flank, for blood in his urine, for tenderness of the left
4 neck muscles, for pain in his strap muscles, trapezius muscles
5 and [inaudible] muscles. No mention or indication of low back
6 pain and problems. Then, also on Page 93, three weeks later he
7 returned to Dr. Smith again and this time he was complaining of
8 mild headaches, shoulder aches and neck aches, but no low back
9 pain.

10 He then saw Dr. Smith again in September of 1996 and
11 this time he was complaining of gouty arthritis in his finger,
12 unrelated to the accident. He saw Dr. Smith on February 24th
13 of 1997, 13 months after the accident, when he injured his
14 elbow, and again no mention of back pain or problems. He saw
15 Dr. Smith again for a scout visit on July 7th of '97, 18 months
16 after the accident, and everything checked out okay, and he had
17 no complaints of back pain at that time.

18 Finally, in November of 1997, 22 months after the
19 accident, Daniel Armstrong went to LDS Hospital for an MRI scan
20 of his lumbar spine, an injury that he had incurred back in
21 1990. That is, and at that time on Page 1-0, Bate stamp 1-0 of
22 Exhibit 1, he reported that he had severe recurrent back pain
23 and says in quotes "the patient describes back pain down the
24 right leg, moderate for one year". That's 22 months after the
25 accident, it's almost two years after the accident.

1 The findings of the MRI spine, of the MRI indicated
2 old degenerative changes, facet joint disease. But did not
3 reveal any additional problems or any causation of his back
4 pain with the accident. These, and for the, there's just no
5 causal connection between his low back pain complaints and the
6 accident. Nothing is documented, and that, if anything it was
7 a very minor role, he was instructed to perform the same kinds
8 of exercise after as before, and for the same reasons the
9 \$1,000 chair, that I don't know if it's included in that figure
10 or not, that came from a chiropractor's letter should not be
11 recoverable and this claim for a spa membership that's itemized
12 on his list of, actually the chair is included in the \$3,823,
13 as I look at his spreadsheet. As is almost \$3,000 for spa
14 membership. The exercises he was instructed to do did not
15 require a spa. There's no evidence that a doctor told him he
16 needed to join the club or that he couldn't do the same kinds
17 of exercises with materials that he could use at his own home,
18 even if he needed to do those exercises as a result of this
19 accident. There's no testimony that would support a claim for
20 the chair or for the spa membership. The, and for that reason
21 we believe that the medical expenses are closer to \$600 than to
22 \$4,000.

23 The property damage claim which hasn't been itemized
24 on here and I don't know whether they're still making a claim
25 for it, should not be recoverable because the vehicle, one was

1 owned by Lorene Armstrong and not by Daniel Armstrong. He
2 didn't have an ownership interest or right in that vehicle, and
3 secondly, the vehicle was paid for by the insurance companies;
4 that he received checks from them and he received salvage from
5 the vehicle. And the claim for lost wages, like the other
6 claims, should not be recognized by the Court. There's no
7 evidence that he lost any clients. There's no evidence that
8 any doctor told him not to work. There's no evidence that any
9 doctor told him he shouldn't work or couldn't work. He had
10 alternatives to work at other hours. He's self-employed, he
11 has control over what he does in that regard. There shouldn't
12 be a, there is an obligation on Mr. Armstrong to mitigate his
13 damages. There's no evidence that if he lost wages that he
14 tried to mitigate them in any way, and for that reason the lost
15 wage claim shouldn't be recognized by the court.

16 Taylor's claim, he was injured. His face was cut, he
17 suffered a concussion. He incurred medical bills and the
18 medical bills that I've got that we'd agree with are \$4,489,
19 and that constitutes, let me see if I have it, the top section
20 of the spreadsheet, the emergency room, the MRI of the brain,
21 the MRI of the C-spine, the second MRI of his brain, or the
22 reading of them of the MRI, and consultation with Dr. Binder.

23 We don't believe that Dr. Bigler's bill should be
24 considered a necessary and reasonable medical expense. We
25 believe it should be considered a cost of litigation as an

1 expert witness fee. He saw Taylor on one occasion in July of
2 1999. His parents prior to that time received information on
3 head injuries numerous times, the day of the accident, under
4 other similar injured in an accident in Idaho, when he went
5 back and talked to Dr. Smith shortly after the accident, and at
6 no time were they concerned that Taylor had suffered from any
7 kind of an ongoing, permanent problem. The brain injury, if it
8 had been a problem, should have been recognized by the
9 Armstrongs.

10 Perhaps the most telling is on Bate Stamp Page 253 of
11 Exhibit 1. Dr. Bigler advised the Armstrongs after that single
12 testing and evaluation that he performed that there should be
13 some follow-up, a follow-up consult in six to 12 months. At no
14 time did the Armstrongs take Taylor back in for any kind of
15 evaluation or follow-up care.

16 Have they worked with Taylor? Yes they have. Have
17 they done well with him? Yes they have. Was he behind at some
18 point in time? Yes he was. But the question that this must
19 must answer, two questions are, one, where is he now, and, two,
20 where will he be in the future? Dr. Bigler said that children
21 with brain injuries have difficulty sometimes finding jobs and
22 in college. He at no time said Taylor Armstrong will have
23 difficulty finding a job, or difficulty in college. Dr.
24 Bigler's evaluation of Taylor in the motor skills category were
25 normal. The difference, the thing that raised a red flag for

1 Dr. Bigler was that there was a 19 percent difference between
2 his verbal IQ score and his performance IQ score. The standard
3 deviation that's acceptable in those circumstances is 15
4 percent, and he indicated that 19 percent difference in and of
5 itself wouldn't be a big deal or cause any concern if they
6 didn't have the history of the concussion and different
7 information that was given to him by the parents.

8 But those, Dr. Bigler finds there is a head injury,
9 but those people who (inaudible) academic records, which Dr.
10 Bigler never saw, were compiled by his teachers who interacted
11 with him on a daily basis. They interact with hundreds of
12 students. They're teaching him, they're teaching professionals
13 and they deal with many people. They have standards to measure
14 academic performance and ability. Taylor has some documented
15 problems in first and second graded. But since that point in
16 time, however, the objective evidence, the grades, the
17 progression he has made indicate that he is average or above
18 average in even a category that they're claiming is a problem
19 at this point in time and there's no reason to believe that his
20 improvement or ability to, as his attorney talked about,
21 reroute his brain to function normally is not going to occur
22 and may continue to exist in the future, and even Dr. Bigler,
23 plaintiff's own expert, does not know what impact, if any, this
24 brain injury, if there is one, may have on him in the future.

25 Awarding damages without some medical evidence

1 regarding where he will be in the future would amount to
2 speculation and conjecture which cannot be permitted. Taylor,
3 like Jared, should be awarded damages, but no where near the
4 neighborhood requested by Plaintiffs. We believe a more
5 appropriate amount would be \$3,000 and \$5,000.

6 There is another claim they, at least in the itemized
7 section of karate lessons. There's no evidence that karate
8 lessons were required and needed as a result of this accident
9 and allowing those damages would also be speculation.

10 There's the punitive damages, we don't believe should
11 be awarded are significant. Mr. Pickett clearly in the wrong.
12 He resolved that through the criminal court system. The
13 damages the plaintiff suffered should be resolved through this
14 litigation and through insurance. We believe the plaintiff
15 will have been, or will be compensated and that virtually any
16 amount awarded in punitive damages would be sufficient to
17 punish Glen Pickett and send the message to him that this is
18 not acceptable. It's been four years. He hasn't had a repeat
19 occurrence and he's working at the same -

20 THE COURT: How do we know that?

21 MR. SMITH: Well, I, I, I guess we don't, other than
22 the plaintiff's attorney would have discovered it if there was.
23 I'm relying on their -

24 THE COURT: How do we know we're getting the message
25 to him if we haven't even got him here?

1 MR. SMITH: That's correct. Only from what I proffer
2 to the Court I suppose. But with, with those arguments, Your
3 Honor, we submit.

4 MR. WILDE: As I indicated initially, we would not be
5 here for Jared's scars. We would not be here for Dan's back.
6 They just happen to be associated with this case and are here
7 because that's where they are.

8 Dr. Smith's records show in at least two examples,
9 places where he asked for a consultation with other doctors and
10 that's not contained in the record. So it's fairly clear that
11 Dr. Smith's records are not complete and Mr. Armstrong's
12 discussion about his consultation with Dr. Smith is probably
13 more correct than Dr. Smith's records.

14 We would cite the Court to Lorene Armstrong's
15 deposition at page 21, where when asked by counsel if
16 incidences which were in Dr. Smith's records or Mr. Armstrong
17 had been in to the see the doctor were things he had discussed
18 with her, any skiing accidents?

19 No.

20 Any racquetball accidents?

21 No.

22 There is in Daniel Armstrong's records from Dr. Smith
23 consultation on both skiing accident and a racquetball
24 accident. Dan Armstrong didn't discuss that with his wife
25 because he's lived with these sorts of pains for as long as

1 he's had them and it's not something he's going to complain
2 about. That's why we're not writing large numbers under Dan
3 Armstrong. He is injured. The injury occurred as a result of
4 this accident and he ought to be compensated for it.

5 Let's talk about Taylor. Dr. Smith was asked what he
6 did for Taylor with regards to his head injury and in his
7 deposition he indicated that Dan Armstrong, his parents,
8 expressed some concern when they brought Taylor in to see Dr.
9 Smith and described what he had as a concussion. He says a
10 concussion, would refer to it as a bruise. It's basically
11 considered to be a bruise that has some neurological deficit
12 associated with it.

13 I asked him are you familiar with closed head brain
14 injury trauma?

15 Yes.

16 Are they different than a concussion?

17 Answer: They're all in the same spectrum.

18 How would one go about diagnosing a closed head brain
19 injury?

20 Well, similar to what we did. He would do a
21 neurologic exam. He would ask about the status questions. And
22 he talks about a client he had that was, that had a similar
23 sort of situation.

24 And then we ask are there other specialists that deal
25 specifically with those closed head brain injuries?

1 Answer: neurosurgeons and neurologists.

2 Question: And neuropsychologists?

3 Sure.

4 And from your knowledge, do they have tests that are
5 different and broader in scope than the ones that were
6 administered to Taylor here?

7 Answer: The tests I did were primary care emergency
8 room basis. Yes they have other tests that do other scans,
9 head scans, MRI scans and other things as well.

10 And psychological instruments?

11 Answer: Yes.

12 So, when Taylor Armstrong was taken by his father to
13 Dr. Smith, his head injury was a concern. That was something
14 that Dr. Smith did for him. Dr. Smith is not a
15 neuropsychologist. He's in family practice. He has an ER
16 board certificate, but he's not a neuropsychologist and he
17 acknowledged that a neuropsychologist is the place that we
18 would go.

19 The discussion about whether or not the Armstrongs
20 took Taylor back to follow-up I think misconstrues what's
21 happened. There's an exhibit to Dr. Bigler's deposition, which
22 is a letter which says he needs to be followed up with six to
23 twelve month intervals. When asked about that in his
24 deposition, both Dan Armstrong and his wife, Lorene Armstrong,
25 in their depositions said, yes, we tried to follow-up. As a

1 matter of fact, we had an appointment set and Dr. Bigler's
2 office canceled it and the reason they canceled it is because
3 the insurance had not paid for the previous visit. So they
4 understood they were to follow-up. They were attempting to
5 follow-up, and because of an insurance snafu it got, it got
6 canceled.

7 Counsel suggests that there was some minor
8 neurological deficit with Taylor which occurred right after the
9 fact. I think the records belie that. If we look at the most
10 current records for Taylor Armstrong, his fourth grade October
11 1999, a year ago, reading vocabulary 43, reading comprehension
12 34 percentile. Total reading 36 percentile. Now we offset
13 that with math and the areas where Dr. Bigler said we wouldn't
14 anticipate to have problems, problem solving 77 percent. Math
15 procedures 56 percent. Total mathematics 69 percent. Social
16 science 76 percent, and so here we have average and Taylor
17 functioning in those areas where he has not been damaged in the
18 75 percent range. Average in those areas which are left
19 hemisphere oriented, as Dr. Bigler tells us, and he's
20 functioning in the 30/40 percent, in one case even down to 17
21 percent. Very clear as of the last time he was tested that
22 there are those sorts of problems still existing. That's from
23 Bate stamp 606.

24 If we look at his third grade we similarly have shown
25 in the 30 something percentile for effective communication.

1 Equally important is his last report card. Page
2 number 596. Fourth grade report card. That's the, the
3 document that Lorene Armstrong went through with us. Spelling
4 A, language A, mathematics A, science A, social studies B+, A-,
5 health A, reading B-. Across the board every single term.
6 Recommendations from the teacher, "practice your reading; keep
7 reading; practice reading during the summer".

8 Contrary to what Mr. Pickett would have us believe,
9 there is in fact still a problem with Taylor. The testimony of
10 Dr. Bigler is that a place where these children have
11 significant problems is when they reach puberty. Taylor is now
12 11. There is no question that he's been injured. There is no
13 question that he has been damaged and those damages will
14 continue to run here on after, and accordingly, we, accordingly
15 we believe the numbers we've provided the Court are
16 appropriate.

17 THE COURT: Okay, counsel. I want you to do this. If
18 you were arguing this case before a jury you would be
19 recommending amounts to them, for the jury to consider and to
20 weigh, and I haven't heard those. I've only heard very limited
21 amounts. I want this, I want the, the plaintiff, within 10
22 days, to file with this Court a written memorandum specifically
23 going to damages. I don't want you to argue the law a lot.
24 Just, any, I don't want any law involved. Just the damages,
25 your recommendations. I don't want an extensive brief. Get

1 right to the point to each of the damages you're claiming for
2 each of them and what you want. Ten days after that the
3 defendant shall file theirs in opposition and within five days
4 after that, the Defendant, the plaintiff will have the right to
5 file a rebuttal. Rebuttal only to, of course, what's, a
6 rebuttal was raised in the defendant, the defendant's, and then
7 I'll get you a decision right out.

8 MR. WILDE: Thank you.


9 MR. SMITH: Okay.

10 (Whereupon the hearing was concluded).
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CERTIFICATE

I HEREBY CERTIFY that the foregoing transcript in the before mentioned hearing held before Judge Homer Wilkinson was transcribed by me from a videotape and is a full, true and correct transcription of the proceedings as set forth in the preceding pages to the best of my ability.

Signed this 7th day of November, 2000 in
Sandy, Utah.


Carolyn Erickson
Certified Shorthand Reporter
Certified Court Transcriber

My Commission expires May 4, 2002

Tab B

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RN
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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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)
DANIEL J. ARMSTRONG, JARED) DAMAGES BRIEF
ARMSTRONG, TAYLOR ARMSTRONG BY)
LORENE ARMSTRONG, HIS GUARDIAN)
AD LITEM)
)
Plaintiff,)
)
vs.)
) Civil No. 980908711
GLEN C. PICKETT AND JOHN DOES)
1-5,)
) Judge Homer F. Wilkinson
Defendant.)
-----oo0oo-----

This matter was tried to the court on the issue of damages after defendant had his pleadings stricken. At the conclusion of the evidence the court asked the parties to brief the issue of damages. Plaintiff presents the following for the court's consideration.

DAN ARMSTRONG
PERSONAL INJURIES

The evidence submitted to the court showed that the wreck of January 6, 1996 exacerbated Dan Armstrong's pre-existing lower back injury. Before the wreck Dan was able to keep the pain under control by using prescribed sit ups and crunches. After the wreck Dan requires half an hour in the gym, six days a week, to achieve the same result. If Dan doesn't use this regimen to control his pain he cannot sleep past 2:00 a.m. Even with these exercises the pain still effects his ability to work and enjoy life.

MEDICAL EXPENSES

Dan's medical expenses, as contained in the exhibit book stipulated to at trial, are at least the following: Western Emergency Physicians, \$265.00; Pioneer Valley Hospital, \$295.75; LDS Hospital, \$1,071.22; A.Lee Bahr, M.D., \$180.00. Dan's expenses related to continuing treatment or therapy, as shown at trial are at least the following: cost of prescribed chair, \$1,073.00; to date total cost of monthly spa membership, \$2,750.00. These expenses total no less than \$5,634.97.

GENERAL DAMAGES

The Rocky Mountain Verdicts and Settlements service shows eight claims which are comparable to Dan's resolved within the

last three years. Attached as Exhibit One are copies of cases and a spread sheet showing these cases by date and number of report in the service, special damages and total award/settlement. Exhibit One also shows the ratio of special damages to the total award/settlement. In analyzing Exhibit One, the Court should keep in mind those cases listed as settled take into consideration some reduction for questionable liability, a matter which is not at issue in this case. For claims like Dan Armstrong's, the average final award/settlement was 4.55 times the amount of special damages. Dan's special damages in this matter were \$5,634.97. By analogy an appropriate award for Dan would be \$25,622.08.

PROPERTY DAMAGE

Dan was paid \$13,675.00 by Atlanta Casualty, defendant's insurance company. He was paid another \$13,482.49 by his underinsured carrier, USF&G. USF&G has a subrogation claim against defendant for this amount which can only be exercised through the Armstrongs.

Additionally, other damages were sustained by Dan as a result of the loss of the Suburban which include the loss of additions to the vehicle which were not paid by either insurance

company. These total \$5,147.78. See Affidavit of Dan Armstrong, attached as Exhibit Two. Dan should be awarded \$5,147.78 plus \$13,675.00 or a total of \$18,822.78.

JARED ARMSTRONG

In the wreck Jared Armstong was severely cut. The scars which resulted from those cuts were revised by Dr. Bindrup. Dr. Bindrup testified that the scars, as they currently exist, will probably remain through out Jared's life. Jared testified the scars are still there and recent pictures show they remain. Jared's mother testified that he was embarrassed about the scars.

MEDICAL EXPENSES

Jared's medical expenses, as contained in the exhibit book stipulated to at trial are at least the following: Gold Cross Ambulance, \$405.28; Western Emergency Physicians, \$265.00; Pioneer Valley Hospital, \$921.50; Consultant Radiologies, \$216.00; Dr. Jed Bindrup, \$75.00; Dr. Jed Bindrup, \$640.00; and John Robinson, \$256.00. These total \$2,778.78.

GENERAL DAMAGES

The Rocky Mountain Verdicts and Settlements service shows seven claims which are comparable to Jared's resolved within the last three years. Attached as Exhibit Three are copies of cases

and a spread sheet showing these cases by date and number of report in the service, special damages and total award/settlement. Exhibit Three also shows the ratio of special damages to total award/settlement. In analyzing Exhibit Three the Court should keep in mind that those cases listed as settled take into consideration some reduction for questionable liability, a matter which is not at issue in this case. For claims like Jared Armstrong's the final award/settlement was 9.32 times the amount of special damages. Jared's special damages in this matter were \$2,778.78. By analogy an appropriate award for Jared would be \$25,887.87.

TAYLOR ARMSTRONG

Following the wreck Taylor Armstrong's parents noticed that his ability to do certain types of school work had changed. In the middle of his first grade year he no longer knew his "A, B, Cs" which he had learned in kindergarten and had mastered in the first half of first grade. When they sought help from Taylor's teachers they were told "read with him." They were reading with him. They continued to read with him. They were so concerned they took him to Dr. Scott Smith who ordered a brain scan but that test was unable to identify any problems. As Taylor's

problems persisted they were finally advised to see Dr. Erin Bigler, Utah's pre-eminent authority on traumatic closed head brain injury. Based on a battery of tests and a detailed history Dr. Bigler diagnosed a mild traumatic closed head brain injury which had damaged the left hemisphere. That damage was quantified by Dr. Bigler as resulting in a 19 point verbal IQ loss. The injury effects Taylor's ability to read and perform complex tasks requiring left hemisphere functions. It means Taylor will not do well in college and will not be competitive for most of the higher paying jobs in our economy. The injury also limits Taylor's ability to participate in various athletic and other physical activities.

Dr. Bigler testified that it is more probable than not that these problems will continue to exist throughout Taylor's life. He also testified that there are three areas of problems typical to children with brain injuries. First, they experience an increase in neuropsychiatric problems like depression-anxiety disorders and stress disorders. Second, children with brain injuries are at increased risk for learning disabilities and learning problems. These disabilities have already been seen in Taylor. Third, children with brain injuries tend to be more

impulsive, have problems with judgment and have problems sustaining attention and concentration. Dr. Bigler testified that puberty is a critical time for children with brain injuries. Taylor turned eleven this month.

There are things Taylor and his family can do to compensate for his injury and work around his deficits. However these will not ever get Taylor back to where his development was in relation to his peers and will never return his functioning to what it would have been had Taylor not been injured. While Dr. Bigler categorized Taylor's injury as a "mild traumatic brain injury" he noted that with brain injuries "you can have mild problems that have monumental difficulties with them."

MEDICAL EXPENSES

Taylor's medical expenses, as contained in the exhibit book stipulated to at trial are at least the following: Gold Cross Ambulance, \$405.28; Western Emergency Physicians, \$265.00; Pioneer Valley Hospital, \$1,174.35; Consultant Radiologies, \$41.00; Consultant Radiologies, \$274.00; American Fork Radiology, \$22.00; American Fork Hospital, \$86.20; HCA St. Marks, \$749.00; HCA St. Marks, \$998.00; Diagnostic Radiology, \$228.50; Diagnostic Radiology, \$171.50; and Dr. Jed Bindrup, \$75.00. Taylor's

expenses related to therapy, as contained in the exhibit book stipulated to at trial are at least the following: Dr. Erin Bigler, \$1,400.00; Hooked on Phonics, \$250.00; Karate Lessons, \$1,008.00. These expenses total no less than \$7,147.83.

FUTURE DAMAGES

Because of the severity of Taylor's injuries and because, as discussed below, the Rocky Mountain Verdicts and Settlements service does not contain adequate information to value the claim Taylor's injuries have been evaluated by Terry Marshall and Dr. Paul Randle. Their assessments are attached as Exhibit Four and Exhibit Five respectively. They believe the present value of Taylor's damages are not less than \$322,329.00 and in all probability at least \$668,458.00. Specifically, the present value of Taylor's: loss of earnings capacity are not less than \$217,206.00, and is probably at least \$496,715.00; loss of normal fringe benefits of employment is not less than \$61,391.00 and probably as least \$128,012.00; and the medical, care and training is \$43,731.00. Applying a present value analysis these experts believe Taylor's future economic costs associated with the injuries he sustained are not less than \$322,329.00 and in all probability at least \$668,458.00.

GENERAL DAMAGES

Taylor's lawyers have examined the Rocky Mountain Verdicts and Settlements for comparable injuries. Exhibit Six lists those awards/settlements. Because of the manner in which they were reported it is not possible to obtain a ratio for Taylor's injuries. Claim number one was settled for \$812,225 but no special damages are listed. Claim number two was merely settled for policy limits and accordingly doesn't reflect the value of the claim which would in all likelihood have been much more had there been insurance coverage. The service does show that the average award/settlement for similar injuries was \$338,334.00.

Taylor's damages discussed above are only his monetary damages, the amounts already spent for medical treatment and therapy and similar types of expenses in the future. They do not reflect any compensation to Taylor for the diminution of his quality of life. They don't reflect the fact that he is unable to play ball with his friends as a youth or that he will be unable to play ball with his children when he becomes a father. Nothing in those numbers compensates Taylor for the aspects of the pure enjoyment of life he will not have because Mr. Pickett decided to drive drunk, again.

Exhibits One and Three show that generally the amount of damages awarded for pain and suffering far exceeds the amount of special damages. Given the totality of the circumstances the court should award Taylor general damages at least equal to his monetary damages of between \$329,476.83 and \$675,605.83.

PUNITIVE DAMAGES

Plaintiffs previously briefed the issue of punitive damages. Mr. Pickett's attorney argued at trial that he had been convicted of an alcohol related offense in connection with this wreck and had learned his lesson. The court correctly noted that he had not learned his lesson enough to appear for his deposition or participate in this litigation. Some of the amounts the court will award the Armstrongs will be paid by insurance, either Mr. Pickett's basic auto policy or the Armstrongs' underinsured policy. The insurance companies will not pay punitive damages. Given the totality of the circumstances plaintiffs believe the court should award each of them punitive damages against Mr. Pickett; Dan Armstrong - \$5,000.00, Jared Armstrong \$5,000.00 and Taylor Armstrong \$50,000.00.

CONCLUSION

Plaintiffs believe the evidence provided the court supports

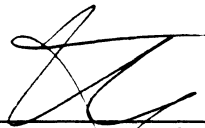
the following damage awards.

Dan Armstrong; medical special damages of \$5,634.97; general damages of \$25,622.08; property damage of \$18,822.78; punitive damages of \$5,000.00.

Jared Armstrong; medical special damages of \$2,778.78; general damages of \$25,887.87; punitive damages of \$5,000.00.

Taylor Armstrong; past medical special damages of \$7,147.83; future special damages of \$668,458.00; general damages of \$675,605.83; punitive damages of \$50,000.00.

Dated this 25 day of October, 2000.



Robert H. Wilde
Attorney for Plaintiffs

EXHIBITS

- 1 Spreadsheet & Rocky Mountain Verdicts & Settlements - Dan Armstrong
- 2 Affidavit of Dan Armstrong
- 3 Spreadsheet & Rocky Mountain Verdicts & Settlements - Jared Armstrong
- 4 Report of Terri L. Marshall-Gilfillan
- 5 Report of Paul Randle, Phd
- 6 Spreadsheet & Rocky Mountain Verdicts & Settlements - Taylor Armstrong

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Damages Brief was hand delivered to the following, this 25 day of October, 2000.

Steve Smith
Scalley & Reading
261 East 300 South #200
Salt Lake City, Utah 84111

Christine Young

Dan Armstrong - Rocky Mountain Jury Verdicts & Settlements

Injury: Lower Back

Month	#	Specials	Total Award	Ratio
Aug 00	4	\$4,837.84	\$20,862.84	4.31
Aug 00	8	\$5,500.00	\$25,000.00	4.55
Jun 00	7	\$5,000.00	\$10,000.00	2.00
Jun 00	17	\$6,633.00	\$76,633.00	11.55
Aug 99	26	\$66,000.00	\$125,000.00	1.89
Apr 98	8	\$9,000.00	\$29,000.00	3.22
Feb 98	22	\$3,000.00	\$20,000.00	6.67
Jan 98	12	\$5,500.00	\$12,000.00	2.18
Average:				4.55

This Case	\$5,634.97	Implies	\$25,622.08
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(PERRY vs. PETERSON MOTOR CO., CONT'D.)

The defense alleged other causes of these disorders, including the fact that the mother had a difficult pregnancy.

SPECIAL DAMAGES: Unknown.

SETTLEMENT: This case settled on a structured basis, including a \$320,000 cash payment, \$1,575/month from 6/21/00 to 5/21/10 (age 18), \$2,281/month, increasing 2% annually, from 6/21/00 through 5/21/50 (age 68), \$15,000 annually for five years starting 5/21/00, with additional

lump sum payments of \$100,000 on 5/21/22 (age 30), \$54,242 on 5/21/32 (age 40), \$400,000 on 5/21/42 (age 50), and \$400,000 on 5/21/52 (age 60). The total present value of the settlement was calculated at \$812,225.

0008 #3 -- DOG BITE - SCARRING ON CHILD'S FACE - \$21,800 SETTLEMENT.

LORI LAY, as guardian ad litem for BRAYDEN WILLIE,

vs.

ROBIN ARCHIBALD.

Second District Court
Weber County
Judge Pamela G. Heffernan
Case No. 990900668

PLAINTIFF'S ATTORNEY: Randall W. Richards,
Maurice Richards, RICHARDS, CAINE & ALLEN.

DEFENDANT'S ATTORNEY: Clifford J. Payne,
NELSON, CHIPMAN, QUIGLEY & HANSEN.

DEFENDANT'S INSURANCE: Unknown

EXPERTS: None disclosed.

PLAINTIFF'S AGE: 4. WORK: None.

FACTS: Plaintiff was bitten in and around the face by Defendant's Grand Pyrenees dog on July 24, 1998.

INJURIES: Plaintiff was bitten on the front part of the left ear, the left eyebrow and forehead area, and on the left hand. Plaintiff has facial scarring and will require future plastic surgery.

SPECIAL DAMAGES: Plaintiff has had past medical bills of \$1,800, and future anticipated bills of \$2,100.

SETTLEMENT: This case settled for \$21,800.

0008 #4 -- LANE CHANGE/TURNING ACCIDENT - NECK AND BACK INJURIES - \$19,837.84 NEW MONEY ARBITRATION AWARD.

CHRISTOPHER MARENGO,

vs.

QUESTAR CORPORATION, CHRISTOPHER I
MONTGOMERY and KASEY HENDERSON

Second District Court
Weber County
Judge Roger S. Dutson
Case No. 990902975

PLAINTIFF'S ATTORNEY: Deirdre A. Gorman, F.A.R.R.

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Salt Lake City, Utah 84157-1261

(LAY vs. ARCHIBALD, CONT'D.)

KAUFMAN, et al.

DEFENDANT'S ATTORNEY: William Rideout for Questar/Montgomery; Jason M. Kerr, PLANT, WALLACE, CHRISTENSEN & KANELL for Henderson. DEFENDANT'S INSURANCE: Unknown.

EXPERTS: None disclosed.

PLAINTIFF'S AGE: Unknown. WORK: Unknown.

FACTS: Plaintiff was a passenger in a vehicle driven by Kasey Henderson. They were traveling northbound on 1900 West near 2550 South. Defendant Montgomery, driving a Questar vehicle, allegedly turned right from a center turn median into Henderson's vehicle.

INJURIES: Plaintiff suffered unspecified injuries to his side, neck and back.

SPECIAL DAMAGES: Plaintiff had medical bills of \$7,600, and unspecified lost wages.

AWARD: This case was resolved through arbitration with Scott Daniels, who awarded Plaintiff at total of \$15,000 in general damages, \$4,637.84 in medical bills not paid by PIP, and \$200 in lost wages not paid by PIP. Judge Daniels also added \$1,025 in interest, and found Henderson to be 65% at fault.

0008 #5 -- SLIP AND FALL - KNEE INJURY, SURGERY - \$72,500 SETTLEMENT.

JOLEEN M. SHIFFLER,

vs.

BOWMAN'S, INC., dba BOWMAN'S THRIFTWAY, and LYNN WARD, dba UTAH ICE COMPANY.

Second District Court

Davis County

Judge Glen R. Dawson

Case No. 980700399

PLAINTIFF'S ATTORNEY: Joel M. Allred, Amy A. Dolce.

DEFENDANT'S ATTORNEY: Scott Martin for Bowman's; Tim Dalton Dunn, Robert C. Morton, DUNN & DUNN, for Ward.

DEFENDANT'S INSURANCE: Liberty Mutual for Bowman's; Ohio Casualty for Ward.

PLAINTIFF'S EXPERTS: Craig McQueen, M.D., Orthopedic Surgeon.

DEFENDANT'S EXPERTS: None disclosed.

PLAINTIFF'S AGE: 30's. WORK: Unknown.

FACTS: Plaintiff, an Oregon resident on vacation in Utah, slipped and fell in water in front of an ice freezer at

Bowman's Thriftway on June 30, 1997. Ward had allegedly delivered ice to the store earlier, with water leaking out of the ice bags during delivery. Ward and a store employee had both seen the water, but no effort was made by either party to clean up the hazard.

INJURIES: Plaintiff suffered an injury to her knee and underwent knee surgery 21 months later.

SPECIAL DAMAGES: Medical bills exceeded \$5,000.

SETTLEMENT: This case settled for a total of \$72,500, including \$5,000 in medical benefits previously paid.

0008 #6 -- INTERSECTION ACCIDENT - SOFT TISSUE INJURY - \$139,309 VERDICT.

MARY ANN SHARP,

vs.

JANET COWAN.

Third District Court

Salt Lake County -Murray Dept.

Judge Michael Burton

Case No. 990407613

PLAINTIFF'S ATTORNEY: Bryan A. Larson, LARSON, TURNER, FAIRBANKS & DALBY.

DEFENDANT'S ATTORNEY: Robin K. Ljungberg, KIDMAN & ASSOCIATES.

DEFENDANT'S INSURANCE: Allstate.

PLAINTIFF'S EXPERTS: John Ogao, D.C., Chiropractor, Michael Goldstein, M.D., Neurologist; Dennis Wyman, M.D.

DEFENDANT'S EXPERTS: Jeffrey Chung, M.D., Physiatrist.

PLAINTIFF'S AGE: 36. WORK: Secretary.

FACTS: Plaintiff was involved in a car accident with Defendant which resulted from Defendant's alleged failure to yield the right of way while making a left turn.

INJURIES: Plaintiff suffered soft tissue injuries.

SPECIAL DAMAGES: Plaintiff had medical bills of \$21,300, and lost wages of \$26,000.

VERDICT: This case was tried to a jury. The jury returned the following verdict in Plaintiff's favor

Past Medicals	.....	\$19,309
Future Medicals	.....	\$5,000
Lost Income	.....	\$40,000
<u>General Damages</u>	...	<u>\$75,000</u>
Total	.....	\$139,309

NOTE: Plaintiff's 11-year-old daughter was also injured in the accident. Her claim is reported separately below

0008 #7 -- INTERSECTION ACCIDENT - SOFT TISSUE
INJURY - \$10,954 VERDICT

ERIN SHARP,

vs

JANET COWAN

Third District Court
Salt Lake County -Murray Dept
Judge Michael Burton
Case No 990407613

PLAINTIFF'S ATTORNEY Bryan A Larson, LARSON,
TURNER, FAIRBANKS & DALBY
DEFENDANT'S ATTORNEY Robin K Ljungberg,
KIDMAN & ASSOCIATES
DEFENDANT'S INSURANCE Allstate
PLAINTIFF'S EXPERTS John Ogao, D C , Chiropractor,
Michael Goldstein, M D , Neurologist, Dennis Wyman,
M D
DEFENDANT'S EXPERTS Jeffrey Chung, M D ,
Physiatrist
PLAINTIFF'S AGE 11 WORK Student
FACTS Plaintiff was a passenger in a car driven by her
mother They were involved in a car accident with
Defendant which resulted from Defendant's alleged failure
to yield the right of way while making a left turn
INJURIES Plaintiff suffered soft tissue injuries
SPECIAL DAMAGES Plaintiff had medical bills of
\$5,954
VERDICT This case was tried to a jury The jury
returned the following verdict in Plaintiff's favor

Past Medicals	\$5,954
<u>General Damages</u>	<u>\$5,000</u>
Total	\$10,954

0008 #8 -- REAR-END ACCIDENT - NECK AND BACK
INJURIES - \$25,000 SETTLEMENT

JERRY J PETERSEN,

vs

RAYMOND R OLSEN

Third District Court
Salt Lake County
Judge J Dennis Frederick
Case No 980908622

PLAINTIFF'S ATTORNEY Richard C Dibblee
DEFENDANT'S ATTORNEY Lowell V Smith, Jeannine
Bennett, SMITH & GLAUSER
DEFENDANT'S INSURANCE State Farm
PLAINTIFF'S EXPERTS Dennis Wyman, M D ,
Physiatrist, Jeffrey Margetts, M D
DEFENDANT'S EXPERTS Gerald Moress, M D ,
Neurologist
PLAINTIFF'S AGE 40's WORK Painter
FACTS Plaintiff was traveling eastbound on 10600 South
at 591 East in Salt Lake County Plaintiff slowed and was
rear-ended by Defendant
INJURIES Plaintiff suffered neck and back injuries,
including a herniated disc in the cervical spine, and a
mild disc bulge in the lumbar spine His symptoms
included migraine headaches, shoulder pain, and numbness
in the arm Future surgery for the cervical herniation was
anticipated Plaintiff had pre-existing conditions, but was
given an addition 3% impairment as a result of this
accident
SPECIAL DAMAGES Plaintiff had past medical bills of
\$5,500, with future medical bills and lost wages expected
to result from surgery
SETTLEMENT This case settled for \$25 000

0008 #9 -- MALPRACTICE - NURSING - CARDIAC
ARREST IN NEWBORN CAUSES BRAIN DAMAGE
CONFIDENTIAL SETTLEMENT

MEGAN MARIE CAMPBELL, et al ,

vs

UNIVERSITY OF UTAH MEDICAL CENTER and
DEBBIE STEVENS, R N

Third District Court
Salt Lake County
Judge J Dennis Frederick
Case No 960908198

PLAINTIFF'S ATTORNEY Joel M Allred
DEFENDANT'S ATTORNEY David G Williams
SNOW, CHRISTENSEN & MARTINEAU
DEFENDANT'S INSURANCE Unknown
PLAINTIFF'S EXPERTS Camille DiCostanzo R N
Neonatal Nurse, Donna Lee Loper, R N , Neonatal
Intensive Care (San Bruno, CA), Patricia Ferriero M D
Pediatric Infectious Diseases, Charles G Prober M D
Pediatric Infectious Diseases (Palo Alto, CA), Robert
Loitz, M D , Pediatric Cardiologist, Houchang Modanlou
M D , Neonatologist (Santa Fe, CA), Andrea Morrison
M D , Pediatric Neurologist (Tarzana, CA), Barry

(GORDON vs CHILD'S AUTOMOTIVE, CONT'D)

work three years early due to the fact that her loss of memory and cognitive function were causing concerns at work, and that she feared giving a patient an incorrect medication

SETTLEMENT This case settled for \$60,000

0006 #7 -- REAR-END ACCIDENT - AGGRAVATED NECK CONDITION - \$10,000 SETTLEMENT

JACQUELINE M DUNN,

vs

CARRIE A ANDERSON

Third District Court
Salt Lake County
Judge Glenn K Iwasaki
Case No 980907893

PLAINTIFF'S ATTORNEY Mark T Ethington
DEFENDANT'S ATTORNEY Stuart H Schultz
DEFENDANT'S INSURANCE State Farm
EXPERTS None disclosed
PLAINTIFF'S AGE 66 WORK None
FACTS Plaintiff was northbound on 700 East on August 16, 1994 She was rear-ended by Defendant and pushed into a car ahead
INJURIES Plaintiff suffered neck and back problems
Plaintiff had a prior history of cervical disc fusion about 20 years prior following a car accident
SPECIAL DAMAGES Plaintiff had medical bills of approximately \$5,000
SETTLEMENT This case settled for \$10,000

0006 #8 -- SLIP AND FALL ON ICE - SPINAL CORD INJURY - CONFIDENTIAL SETTLEMENT

WILLIAM SMITH,

vs

QUAKER STATE CORPORATION, dba Q-LUBE

Third District Court
Salt Lake County
Judge Anne M Stirba
Case No 980907482

PLAINTIFF'S ATTORNEY Paul T Moxley, Catherine L

Brabson

DEFENDANT'S ATTORNEY Ryan E Tibbitts, Julianne P Blanch

DEFENDANT'S INSURANCE ITT Specialty Risk

PLAINTIFF'S EXPERTS John Brough, Economist

DEFENDANT'S EXPERTS Gary Peterson, Economist

PLAINTIFF'S AGE 50's WORK Asst College Football Coach

FACTS Plaintiff slipped and fell on ice at Defendant's business located at 1577 Foothill Boulevard The accident occurred December 10, 1997 Defendant alleged that nearly two feet of snow had fallen two days before the incident and that they had shoveled and spread two applications of ice melt before the incident Defendant also claimed that temperatures never rose above freezing on the date of the incident, and finally argued that Plaintiff's footwear, cowboy boots, were inappropriate for the weather

INJURIES Plaintiff fell backwards, landing on his back and head He suffered spinal cord shock and was completely paralyzed for a time He underwent anterior discectomy and fusion surgery at C3 and C4 Plaintiff continues to have incomplete paralysis with dexterity problems, difficulty ambulating, fatigue, bowel and bladder problems, etc

SPECIAL DAMAGES Plaintiff had medical bills of approximately \$70,000 Lost wages were not specified although Plaintiff had to quit his job as an assistant football coach at the University of Utah

SETTLEMENT This case settled for a confidential amount

0006 #9 -- SUMMARY JUDGMENT ISSUE - EXCULPATORY LEASE LANGUAGE RULED NOT SUFFICIENTLY CLEAR

LAINNE CORNMAN,

vs

RICHARD HALTERMAN and CLAUDIA HALTERMAN

Third District Court
Salt Lake County
Judge Ronald E Nehring
Case No 970902636

PLAINTIFF'S ATTORNEY G Steven Sullivan

DEFENDANT'S ATTORNEY Lynn S Davies Cheri K Gochberg

DEFENDANT'S INSURANCE Unknown

EXPERTS None disclosed

(GRAYSON vs. PETTEY & BRANTLEY, CONT'D.)

PLAINTIFF'S ATTORNEY: Darwin C. Fisher.

DEFENDANT'S ATTORNEY: Scott R. Sabey, J. David Pearce for Pettey & Brantley; Bryan C. Robinson, Pro se; Hollis R. Hunt for Lawrence Hunt.

DEFENDANT'S INSURANCE: Unknown.

EXPERTS: None disclosed.

FACTS: Plaintiffs in 1995 were owners of the Antelope Valley R.V. Park in Delta, Utah. The property was encumbered by numerous liens and encumbrances, and Plaintiffs retained the law firm of Pettey & Brantley (Pettey) to clear title to the property, apparently in preparation for a sale of the property to Vince Lopez, which was to close by the end of April, 1996. By the time this closing date arrived, the only remaining cloud on the title was a lien by ADC Plumbing. Plaintiffs and Lopez agreed at this point to cooperate in a later closing. Plaintiffs in June notified Pettey not to take action on the ADC lien. Plaintiffs then terminated Pettey as their attorneys and personally prepared and served a three-day notice to pay rent or vacate on Lopez. Within three weeks Plaintiffs hired Lawrence Hunt as their attorney. Plaintiffs in September filed a lawsuit against Lopez, who answered the complaint affirming he remained ready, willing and able to close on the sale provided the ADC lien was removed. Lopez also counterclaimed against Plaintiffs for breach of contract. Lopez continued to remain amenable to closing on the property through December 1996, but Plaintiffs informed Hunt in writing to take no action on the ADC lien until after January 2, 1997. The lien was removed by Hunt in April, 1997. Plaintiffs' lawsuit against Lopez was tried in Fourth District Court, along with Lopez' counterclaim for breach of contract, with judgment in that suit being entered on June 15, 1999. Lopez was awarded a net judgment for \$86,545.69, plus attorneys' fees and specific performance of the contract. Plaintiffs sued their former attorneys, alleging the attorneys' misconduct or malpractice resulted in the adverse judgment.

VERDICT: This case was tried in a bench trial to Judge Homer F. Wilkinson on February 22 and March 16, 2000. The court found that Pettey had breached no duty to Plaintiffs, that the hiring of Hunt was an intervening cause, and that Plaintiffs' damages were the result of their own choices and instructions to counsel. Likewise, as to Hunt, the court found that there was no breach of duty, that the breach of contract alleged by Lopez occurred before Plaintiffs' hired Hunt as their attorney, and that Plaintiffs' damages were the result of their own choices and instructions to counsel.

OFFERS: No information provided.

006 #17 -- REAR-END ACCIDENT - NECK/BACK STRAIN, HEADACHES - \$76,633 VERDICT.

PENNELL POWELL,

vs.

JEREMY YORK.

Third District Court
Salt Lake County
Judge Denise Lindberg
Case No. 990402162

PLAINTIFF'S ATTORNEY: Bryan A. Larson.

DEFENDANT'S ATTORNEY: William Stegall.

DEFENDANT'S INSURANCE: Allstate.

PLAINTIFF'S EXPERTS: Jim Brown, D.C., Chiropractor; Dennis Wyman, M.D., Physiatrist.

DEFENDANT'S EXPERTS: Michael Chung, M.D.

PLAINTIFF'S AGE: 68. WORK: Retired.

FACTS: Plaintiff was westbound on 3500 South when he was rear-ended by Defendant's vehicle. The accident occurred in May, 1998. Plaintiff's vehicle sustained approximately \$1,000 in damages.

INJURIES: Plaintiff suffered from headaches, and cervical, thoracic and lumbar sprains/strains. Plaintiff had extensive arthritis and degenerative joint disease pre-existing the accident.

SPECIAL DAMAGES: Plaintiff had medical bills of \$6,700.

VERDICT: This case was tried to a jury on June 20-21, 2000. The jury ruled in Plaintiff's favor, and awarded the following:

Past Specials: \$5,073 00

Future Specials: \$1,560 00

General Damages: \$70,000 00

Total \$76,633.00

OFFERS: Plaintiff demanded \$7,800. Defendant offered \$2,500.

0006 #18 -- CAR/MOTORCYCLE ACCIDENT - FRACTURES TO VERTABRA, RIBS, NOSE, 9% IMPAIRMENT - \$84,056 ARBITRATION AWARD

NATE SQUIERS,

vs.

FARMERS INSURANCE COMPANY.

(Olson vs. State Farm, Cont'd.)

agree on settlement. The three member arbitration panel awarded the three adult children of the Olsons \$825,000 in compensatory damages and another \$30,000 in punitive damages. With interest and costs, the total value of the award was in the vicinity of \$1,025,000. The arbitration panel consisted of three senior and experienced lawyers with varying practices. Their award was unanimous.
Offers: Plaintiffs demanded \$1,000,000. State Farm offered \$400,000.

Note: Counsel commented that although two of the three adult children lived out of state, the family maintained regular phone contact. Dr. Katz offered key testimony regarding the range of losses suffered by adult children when they lose their parents, giving the arbitrators an understanding of the complex nature of the parent/child tie which extends into the adult years. A dram shop case remains pending against the bar that served the drunk driver.

ID9908 #24 -- **Rear-end Collision - Neck Surgery, Pre-existing Arthritis - \$83,000 Settlement.**

Roy L. Wallace,

vs.

Rene Barbosa.

Fourth District Court
 Ada County
 Judge Michael McLaughlin
 Case No. CV PI 98-379

Plaintiff's Attorney: Timothy C. Walton

Defendant's Attorney: Andrew Brassey

Insurance: State Farm.

Experts: None disclosed.

Plaintiff's Age: 52. **Work:** Truck driver.

Facts: Plaintiff was in the course of his employment as a beverage truck driver. He was rear-ended by the Defendant on October 14, 1997. The accident occurred on 11th Avenue North in Nampa, Idaho. Plaintiff's vehicle suffered very minimal if any observable damage.

Injuries: Plaintiff developed neck problems and underwent a two-level discectomy and fusion of the cervical spine. X-rays revealed a pre-existing degenerative arthritis condition. Plaintiff had not had prior complaints of neck pain. A treating doctor stated that the neck surgery was 50% related to pre-existing conditions.

Special Damages: Plaintiff had medical bills of \$27,000 and lost income of \$6,000.

Settlement: This case settled for \$83,000.

WY9908 #25 -- **Hay Ride - Horses Spooked - Drowning of 9-year-old Girl - Confidential Settlement.**

Schmidt,

vs.

Moose Creek Ranch.

U S District Court
 District of Wyoming
 Case No. 2 98 CV 0261

Plaintiff's Attorney: Gary Shockey

Defendant's Attorney: R. Michael Mullikin.

Insurance: Gulf Insurance.

Plaintiff's Experts: Robin Wiltshire, Horsemanship (WY), Jill McEwan, Horsemanship-National Guidelines (Barrington, IL).

Defendant's Experts: None disclosed.

Decedent's Age: 9. **Work:** None.

Facts: Susanna Schmidt, a 9-year-old girl, was a guest along with her family at Defendant's dude ranch near Jackson, Wyoming. Susanna and her mother were participating in a hay ride when horses were spooked and galloped out of control. Everyone was able to jump off the wagon except Susanna and her mother. The wagon and/or Susanna were eventually dumped into Moose Creek, which was swollen with spring runoff. Susanna drowned. Plaintiff alleged negligence in the form of improper rigging and unsafe equipment. Plaintiff noted that the wagon did not have brakes. Plaintiff also claimed that the young driver of the wagon was not adequately trained.

Special Damages: No information.

Settlement: This case settled for a confidential amount.

Note: Plaintiff's counsel noted that Gulf Insurance is affiliated with Gillingham & Associates in Denver, CO, which handles a number of claims involving recreational property accidents around the country. Attorneys involved in such claims may contact Plaintiff's counsel.

WY9908 #26 -- **Rear-end Accident - Delayed Treatment, Back Surgery - \$125,000 Award.**

Baker,

vs.

Lesh.

First District Court
 Laramie County

(Baker vs. Lesh, Cont'd.)**Plaintiff's Attorney:** Robert Tiedeken.**Defendant's Attorney:** Mark Carman.**Insurance:** Unknown.**Plaintiff's Experts:** Dale Shaeffer, M.D., Neurosurgeon (Montana).**Defendant's Experts:** George Zavala, M.D., Neurosurgeon (San Antonio, TX).**Plaintiff's Age:** 32, Female. **Work:** Housewife.**Facts:** Plaintiff was a passenger in her family van. She was rear-ended by Defendant on Lincoln Way in Cheyenne in August, 1993. Speed of impact was estimated at 25-30 mph. The van sustained \$1,000 in property damage.**Injuries:** Plaintiff visited the emergency room on the day of the accident and complained only of neck symptoms. She sought no further treatment until four months later, when she first complained of low back pain. She went

another fourteen months without treatment, until February, 1995, at which point she sought further treatment for back pain when she aggravated the condition while shoveling snow. Plaintiff then sought no further treatment until June, 1996, when she again complained of low back pain following a coughing spasm. Plaintiff then had continuous treatment until she underwent a discectomy of the low back in September, 1996. Defendant disputed the relation of the low back condition to the accident. Plaintiff's expert testified the car accident was the cause of the problem.

Special Damages: Plaintiff had past medical bills of \$16,000. She claimed she would need future surgery and medical expense of approximately \$50-60,000.**Award:** This case was submitted to binding arbitration. The arbitrators ruled in Plaintiff's favor, and awarded total damages of \$125,000.**Offers:** No information provided.**I N D E X****CASE TYPES**

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CAR/PEDESTRIAN ACCIDENT	4, 8
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DEATH - ELDERLY COUPLE	10
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TINNITUS	4
TMJ TENDERNESS	5
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PLAINTIFFS

BAKER	11
BAKKER, MICHELLE	7
BUCKNER, SHELLEY	6
CHILD, DAVID	8
CHILD, KLELL J.	8
CUTHBERT, COLLIN	5
DADE, CRAIG	7
DEIRMENDIAN, JOHN	1
FORD, KRISTEN	6
FRAMPTON, CONNIE	7
GALVEZ, LORI	10
GEORGE, TERRY	5
JOHNSON, NANCY ALIREZ	3
MILES, SHERMA	9
MITCHELL, KARLEEN VAROZ	3
MORTENSEN, NEIL T.	5
OLSON, HEIRS OF ROBERT &	
NANCY	10
OLSON, NANCY	10
OLSON, ROBERT	10
PARRISH, CANDICE	4
ROMO, MABEL R.	1
SCHLENSKE, JASON T.	5
SCHMIDT	11
SIDDOWAY, CYNTHIA	3
SIMMONS, JOLEEN	4
SORENSEN, DUSTY RAY	7
SORENSEN, RAY	7
STILSON, DENNIS R.	9
TAUFER, STEVEN L.	8
TOINES, PILAR	4
TOINES, TINA	4
WALLACE, ROY L.	11

(Hawkins vs. Smith's, Cont'd.)

Defendant claimed, therefore, that it had done everything within reason to assure the safety of store patrons.

Injuries: Plaintiff suffered a hairline fracture to bones in his feet. Plaintiff had a long prior history of problems with his feet which had caused persistent pain and had required several operations. He claimed, however, that for a time just prior to this accident he had been pain-free for the first time in years, and that this accident renewed his problems.

Special Damages: Plaintiff had medical bills of \$1,800.

Verdict: This case was tried to a Utah County jury on April 1-2, 1998. The jury found Defendant to be liable, and awarded Plaintiff \$1,800 for medical bills, and \$20,000 for pain and suffering.

Offers: Defendant had offered to settle before trial for \$3,000. Plaintiff demanded \$20,000.

9804 #7 -- **Fall From Shelves at Store - Disabling Leg and Ankle Injury.**

David W. Hamess,

vs.

Smith's Food & Drug Centers and Travelers Property & Casualty.

Third District Court
Salt Lake County
Judge Anne M. Stirba
Case No. 950900409

Plaintiff's Attorney: Mark F. James, Brent O. Hatch, Paul C. Drecksell.

Defendant's Attorney: Randall D. Lund, Sandra McDonald for Smith's; Carrie T. Taylor for Travelers.

Plaintiff's Experts: Douglas Schow, M.D., Orthopedic Surgeon; Mike Davis, Economist.

Defendant's Experts: Defendant used an ergonomics expert from California.

Facts: Plaintiff was a 53 year old man. He was employed as a sales representative for Nabisco. His job included responsibility to stock shelves of supermarkets with Nabisco products. Plaintiff claimed that most stores provided lower shelves which were easily accessible for stocking, but that Defendant required him to stock products on the top shelf. It was also expected that Plaintiff would complete his responsibilities quickly so as to interfere as little as possible with customers. Defendant normally provided a ladder for Plaintiff's use. On the date in question, however, the ladder was broken. Plaintiff therefore had to scale the shelves and rely on an assistant

to throw items up to him. Plaintiff lost his balance and fell 12-14 feet to the floor.

Injuries: Plaintiff suffered a broken right leg and fractured ankle. He now walks with the aid of a cane.

Special Damages: Plaintiff had past medical bills of \$9,200, with future medical bills of \$1,600 anticipated. He was permanently disabled from continuing in his former job, at which he had earned approximately \$60,000. His economist calculated lost income worth several hundred thousand dollars.

Verdict: This case was tried to a jury from March 10-13, 1998. The jury found Defendant 80% at fault, and Plaintiff 20% at fault. The jury awarded special damages of \$681,865.70, and general damages of \$200,000. After deducting for comparative negligence, and including costs and interest, the verdict came to \$714,897.88.

9804 #8 -- **Minor Impact Rear-end Collision - Neck and Back Injuries.**

Stacy Pincombe,

vs.

Jack Selway.

Second District Court
Davis County
Judge Michael D. Lyon
Case No.

Plaintiff's Attorney: Steven Kaufman, Richard Medsker

Defendant's Attorney: Robert H. Henderson.

Plaintiff's Experts: Jeffrey Wheeler, D.C., Chiropractor; Joseph Brimhall, D.C., Chiropractor (Treating)

Defendant's Experts: Thomas Noonan, M.D., Orthopedic Surgeon.

Facts: Plaintiff, a young woman, was stopped at an intersection. She was just moving forward when she was rear-ended by Defendant. Both attorneys described the impact as fairly minor. Plaintiff's vehicle sustained about \$3,000 in damages. Defendant did not dispute damages, but focused on the chiropractic care, alleging that her bills were far in excess of necessary.

Injuries: Plaintiff suffered injuries to her neck and back which included injury to one or more discs. She had to have surgery, and was treated almost exclusively by a chiropractor.

Special Damages: Plaintiff had medical bills of approximately \$9,000, almost all of which was for chiropractic. She worked preparing displays for department store window fronts. She claimed some loss of income, although she actually made more after the accident than she had before.

(Pincombe vs. Selway, Cont'd.)

Verdict: This case was tried to a jury in Davis County on March 16-17, 1998. The jury awarded Plaintiff special damages of \$9,000, and general damages of \$20,000.

Offers: Defendant offered to settle for \$6,500. Plaintiff demanded \$60,000.

9804 #9 -- FELA Claim - Railroad Employee Suffers Back Injury in Two Separate Job-related Accidents.

Shane J. Marsh,

vs.

Union Pacific Railroad Company.

Third District Court
Salt Lake County
Judge Timothy R. Hanson
Case No. 960905181

Plaintiff's Attorney: Brent O. Hatch, Mark F. James.

Defendant's Attorney: J. Clare Williams, Morris O. Haggerty.

Experts: None disclosed.

Facts: Plaintiff was a trainman in his late 30's. He and a crew were moving railroad cars on June 9, 1995, when the train in which Plaintiff was seated was "slammed" from behind by railroad cars being moved by another crew. The impact threw Plaintiff from the engineers seat he was sitting in. Later, on August 18, 1996, Plaintiff was inside a locomotive that was crashed into by railroad cars being pushed by another crew. Plaintiff claimed that the accident occurred due to the yardmaster's faulty instructions.

Injuries: Plaintiff suffered a non-surgical soft tissue injury to his back. He also complained of pain in his neck, left arm and left leg. The second accident aggravated his condition.

Special Damages: No information provided. All medical bills were paid by Defendant separately from the settlement.

Settlement: This case settled for \$343,000. As part of the settlement, Plaintiff agreed to termination of his employment in consequence of his injuries.

9804 #10 -- Car/Pedestrian Accident - Neck and Back Soft Tissue Injuries.

Charles B. Pettibone,

vs.

Eric Haller.

Third District Court
Salt Lake County
Judge Homer F. Wilkinson
Case No. 960900058

Plaintiff's Attorney: Kevin K. Robson, Daniel Bertch.

Defendant's Attorney: Joseph J. Joyce.

Plaintiff's Experts: Ronald Kofer, D.C., Chiropractor (Treating).

Defendant's Experts: Scott Knorpp, M.D., Physiatrist; Newell Knight, Accident Reconstruction.

Facts: Plaintiff, a 50 year old engineer, was crossing the road near the Salt Lake Airport at 3770 West Terminal Drive when he was struck by Defendant. It was agreed that Plaintiff was not in a crosswalk, though it was disputed how far he was from the crosswalk, where he had stepped off the curb to enter the street, and at what angle he was crossing the road. There was also a dispute as to whether other vehicles had stopped for Plaintiff. Defendant claimed that his vision was somewhat obscured by the sun in his eyes.

Injuries: Plaintiff suffered soft tissue injury to his neck and back. He testified that he felt about 95% recovered by the time of trial, a figure which Defendant's expert felt was reasonable.

Special Damages: Plaintiff had \$9,000 in medical bills, almost entirely for chiropractic and physical therapy.

Verdict: This case was tried to a jury on February 9-10, 1998. The jury found both Plaintiff and Defendant were negligent, but did not determine percentages inasmuch as they also ruled that the accident was not the proximate cause of Plaintiff's injuries.

Offers: Defendant offered \$1,500. Plaintiff demanded \$10,000.

9804 #11 -- Insurance Bad Faith - Refusal to Pay for Rehabilitation Center Medical Expenses.

Glen A. Billings and Stanley D. Billings,

vs.

Union Bankers Insurance.

(Dayton vs. Valley Asphalt, Cont'd.)

a 6% whole person impairment.

Special Damages: The parties stipulated to medical bills of \$58,873.70. Lost wages were said to be minor.

Verdict: This case was tried to a jury for six days in mid-December, 1997. The jury ruled that both Plaintiff and his employer were negligent, and that their negligence was a proximate cause of Plaintiff's injuries. The jury also found that Savage Industries (the general contractor at the site who was named on the verdict form) was negligent, but that this negligence was not a proximate cause of injuries. The jury found that Defendant was not negligent. The jury also found that the release that Plaintiff had signed with Defendant was valid and enforceable.

Note: Plaintiff settled his claim with Savage Industries before trial for \$14,000.

Offers: There were no pre-trial offers to settle this case.

9802 #22 -- Plaintiff Collides with Left-turning Defendant at 50 mph - Facial Lacerations, Neck/Back Strain.

John Doe,

vs.

State Farm Mutual Automobile Insurance Company.

Third District Court
Salt Lake County
Judge
Case No. 950908090

Plaintiff's Attorney: David R. Olsen.

Defendant's Attorney: John Clyde Hansen, J. Kelly Walker.

Experts: None disclosed.

Facts: Plaintiff, an attorney, collided with a left-turning uninsured motorist on March 12, 1987. Plaintiff was on his way to work at the time and was traveling about 50 mph at the time of impact.

Injuries: Plaintiff was thrown forward by the impact with his face smashing into and breaking the windshield. He suffered serious abrasions or lacerations on his forehead and the bridge of his nose. He was left with some minor scarring and claimed that he suffered permanent hair loss, although the defense claimed that Plaintiff had a receding hairline in any event. Plaintiff also suffered neck and back strains.

Special Damages: Plaintiff had medical bills of approximately \$3,000. He also claimed to have missed several weeks of work.

Settlement: This case settled for \$20,000.

9802 #23 -- Slip and Fall on Ice - Fractured Ankle Requires Surgery.

Joan Bellonio,

vs.

Zions Securities Corporation.

Third District Court
Salt Lake County
Judge J. Dennis Frederick
Case No. 950907064

Plaintiff's Attorney: Gordon K. Jensen.

Defendant's Attorney: John E. Hansen.

Plaintiff's Experts: Dan Hammon, M.D., Orthopedic Surgeon; Jeffrey A. States, D.C., Chiropractor.

Defendant's Experts: None disclosed.

Facts: Plaintiff was walking westbound on First Avenue in Salt Lake City in the early morning hours of December 16, 1994. She claimed that she slipped and fell on ice on the sidewalk in front of a parking lot owned by Defendant. She claimed and Defendant admitted responsibility for maintenance of the walkway. There had been a heavy snowfall a few days earlier, after which the weather warmed up. Defendant had removed snow from the walkway, but the warm weather that followed caused runoff which froze at night and remained as a coating of ice on the sidewalk in the early morning. Defendant claimed that it had done everything necessary to maintain the walkway. Plaintiff claimed that Defendant should have known of the runoff and ice problem, and should have placed salt or sand in the area. Plaintiff argued as well that the sidewalk sloped downward in the area where she fell, further enhancing the likelihood of an accident.

Injuries: Plaintiff suffered a fractured left ankle which required surgery during which several screws were inserted.

Special Damages: Plaintiff had medical bills of \$15,000. She missed about three weeks of work from her position as a placement officer at a temporary job service.

Verdict: This case was tried to a jury on January 20 and 21, 1998. The jury deliberated 1:45 hours before returning with its verdict finding Defendant not negligent.

(Iverson vs. FHP, Cont'd.)

Second District Court
Weber County
Judge Parley Baldwin
Case No. 970901839

Plaintiff's Attorney: James R. Hasenyager.

Defendant's Attorney: Francis J. Carney.

Experts: None disclosed.

Facts: Plaintiff alleged that she visited Defendant's medical center on October 13, 1995 for treatment of a fractured small finger on her left hand. She claimed that she was seen by a physician's assistant during her first visit and by the same assistant each subsequent visit over a period of two months, never receiving treatment from a medical doctor. During her first visit she claims the the PA told another staff member to tape the fractured finger to an adjacent finger and have Plaintiff return in five to seven days. Plaintiff returned on October 19 and was allegedly told that everything looked fine and that she should return in three to four weeks. Her third visit occurred on November 9, when she was told to continue with splinting of the finger. Plaintiff claimed that by this time it should have been apparent that the finger was not healing, and that referral to a qualified doctor was necessary. Plaintiff returned for her final visit on December 11, at which time the assistant observed no healing and referred Plaintiff to an orthopedic doctor for further treatment. Plaintiff alleged that the delay in proper treatment has left her with permanent disability of the affected finger.

Settlement: This case settled. I was unable to obtain any information regarding the settlement.

9801 #11 -- Teen-age Driver Loses Control, Rolls Car - Psychological Damage.

Kennidee Thiel,

vs.

Tiffany Naisbitt, Jed Paul Naisbitt as guardian ad litem of Tiffany Naisbitt.

Second District Court
Weber County
Judge W. Brent West
Case No. 960900297

Plaintiff's Attorney: Samuel J. Conklin, Catherine S. Conklin.

Defendant's Attorney: George T. Naegle, Gary B. Ferguson.

Plaintiff's Experts: None disclosed.

Defendant's Experts: Ronald Probert; Ronald Woolley; Elaine Clark, Ph.D.; Thomas Blotter, Ph.D.

Facts: Plaintiff was a passenger in a car driven by Tiffany Naisbitt, a 16 year old girl who had had her driver's license for only 18 days. Naisbitt's father allegedly gave Tiffany permission to take the car on a trip to Idaho with other teenagers as passengers. Plaintiff alleged that Naisbitt was deliberately swerving back and forth while driving on Highway 20 in Fremont County, Idaho, and that she lost control of the car in so doing. Tiffany admitted that she was doing a "swerving thing" - jerking the wheel back and forth - with the approval of other passengers. She stated that she then looked down at a CD one of the passengers was fiddling with, and that she looked back up to see a semi-truck coming straight towards her. She claimed that she tried to swerve but the wheel would not turn initially. The car then veered out of control and rolled. A wheel came off the car, and Stephanie speculated that this was why the steering wheel would not respond. The investigating officer felt, however, that the wheel came off during the rollover, not before.

Injuries: One of the passengers was ejected and killed. Plaintiff Thiel suffered physical injuries which had resolved. The major complaint related to psychological damages caused by the accident.

Special Damages: No information provided.

Settlement: The best information provided to me indicated that this case settled for \$45,000.

9801 #12 -- Rear-end Collision at Stop Light - Neck/Back/Shoulder Pain.

Beverly Amason,

vs.

Yong J. Lee.

Third District Court
Salt Lake County
Judge William B. Bohling
Case No. 960908784

Plaintiff's Attorney: Tad D. Draper.

Defendant's Attorney: Clifford J. Payne.

Experts: None disclosed.

Facts: Plaintiff was a 45 year old postal worker. She was stopped at a traffic light at 300 East 100 South in Salt Lake City on August 11, 1995, when she was rear-ended by Defendant.

Injuries: Plaintiff had pre-existing neck and back pain. She claimed that this was aggravated by the car accident. She also developed shoulder pain following the accident.

(Amason vs. Lee, Cont'd.)

She later was involved in another accident which aggravated her symptoms further

Special Damages: Plaintiff had medical bills of approximately \$5,500

Settlement: This case settled for \$12,000

9801 #13 -- Older Woman Trips on Step at Store Entrance - Fractured Pelvis.

Elizabeth O. Miller,

vs.

Interstate Brands Corporation, dba Dolly Madison Bakery, Allen Nye, dba Fred M. Nye Company, Richard Conto and C. Lynn Conto.

Second District Court
Weber County
Judge Michael D. Lyon
Case No. 960900273

Plaintiff's Attorney: David R. Hamilton

Defendant's Attorney: Tim Dalton Dunn, J. Rand Hirschi for Interstate Brands, Stephen J. Trayner, George D. Knapp for Nye and Conto

Plaintiff's Experts: William Paul Martin, Building Safety

Defendant's Experts: Roger Evans, Building Inspector, Dave Stephens, Safety Expert

Facts: Plaintiff was an older woman in her 80's. She was exiting the Dolly Madison Bakery store at 3990 South 1900 West in Ogden on December 13, 1993. She tripped and fell on an 8" step just outside the exit doorway. The step in question was even with the hinge on the door, creating a situation where a patron who opened the door more than 90 degrees could step out the door and immediately encounter the drop-off. She claimed that this created an improper hazard. The defense argued that the step was painted red, with warning signs both on the step and near the doorway. Plaintiff disputed that the step was painted on the date of her accident. Her expert stated that the warnings, even if they existed, did not remedy the danger of the situation. A motion for summary judgment filed by the defense was denied.

Injuries: Plaintiff suffered a fractured pelvis.

Special Damages: Plaintiff incurred medical bills of approximately \$8,000.

Settlement: This case settled for \$22,000. The landlords (Nye/Conto) contributed equally with the store owner to this settlement.

9801 #14 -- Plaintiff Stops Suddenly and is Rear-ended - Soft Tissue Neck and Back Injuries.

Kami Davis,

vs.

Lisa Marie Needham.

Fourth District Court
Utah County
Judge Fred D. Howard
Case No. 960400406

Plaintiff's Attorney: Charles Abbott

Defendant's Attorney: Robert L. Jeffs

Plaintiff's Experts: Gordon McClean, D.C., Chiropractor

Defendant's Experts: E. Paul France, Ph.D., Biomechanics (Deposition only - did not testify at trial)

Defendant's Insurance: Farmers

Facts: Plaintiff was a 22-year-old woman. She was rear-ended by the Defendant on October 10, 1995 while traveling on 1300 South Street in Orem. The accident occurred near a construction site. A third vehicle swerved in front of Plaintiff, who then slammed on her brakes to avoid hitting a construction barrier, stopping just inches short of the barrier. Defendant then rear-ended Plaintiff. Plaintiff alleged that Defendant was following too close. Defendant claimed that the whole sequence created a sudden emergency.

Injuries: Plaintiff suffered soft tissue injuries to her cervical and lumbar spine.

Special Damages: Plaintiff had medical bills of \$5,400. She missed only a couple of days of work.

Verdict: This case was tried to a Utah County jury. The jury found both parties equally at fault, resulting in a no cause verdict in favor of Defendant.

Offers: Defendant offered to settle for new money of \$7,500. Plaintiff demanded \$17,000.

Issues: Defendant's biomechanics expert was deposed and testified that the impact in this accident would not have caused the injuries of which Plaintiff complained. Upon further questioning he allegedly admitted that he could only say that an average person would not have been injured, but that Plaintiff or others might be exceptions. Plaintiff's counsel has advised that he will be happy to share a copy of this deposition with interested parties.

ROBERT H. WILDE #3466
ROBERT H. WILDE, ATTORNEY AT LAW, P.C.
Attorneys for Plaintiffs
935 East South Union Avenue Suite D-102
Midvale, Utah 84047
Telephone: (801) 255-4774

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----

DANIEL J. ARMSTRONG, JARED)	
ARMSTRONG, TAYLOR ARMSTRONG BY	)	AFFIDAVIT OF DANIEL
LORENE ARMSTRONG, HIS GUARDIAN	)	ARMSTRONG
AD LITEM)	
)	
Plaintiff,)	
)	
vs.)	
	)	Civil No. 980908711
GLEN C. PICKETT AND JOHN DOES)	
1-5,)	
	)	Judge Homer F. Wilkinson
Defendant.)	

-----oo0oo-----

Comes Now, DANIEL ARMSTRONG, having been duly sworn and
deposes and says:

1. I am Daniel Armstrong, a Plaintiff in the above entitled matter and husband of Lorene Armstrong, that I am competent to testify in each matter stated herein, that I would so testify if called upon to do so, that each matter stated herein is stated upon my own personal knowledge and that each document attached hereto is a true and correct copy of the original.

2. On January 7, 1996, my wife and I owned a 1992 Chevrolet Suburban, VIN No. 1GNGK26K1N3333572 ("Suburban").

3. Prior to January 7, 1996, my wife and I had a "Ming" finish added to the Suburban at a cost of \$245.70 as shown by the receipt located in Tab J of the trial exhibit book. We also installed a custom stereo system (\$3,125.47) and running boards (\$631.44) as shown by the receipts located in Tab X of the trial exhibit book.

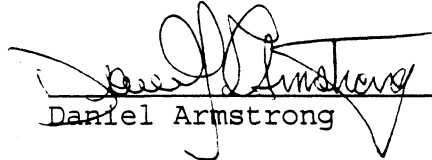
4. On January 7, 1996, the Suburban was totaled as a result of Glen Pickett running into it. The Suburban was valued at \$27,357.49 by USFG Insurance Company ("USF&G") as shown in Tab J of the trial exhibit book. USFG provided an adjustment of: \$160.00 for the installation of the running boards; \$1,1505.00 for the stereo system; and \$750.00 for the Ming finish.

5. USF&G paid \$13,482.49 to First Utah Bank as a payoff for the Suburban. Atlanta Casualty paid an additional \$13,675.00 for damages done to the Suburban. The total monies paid for damages to the vehicle was \$27,357.49.

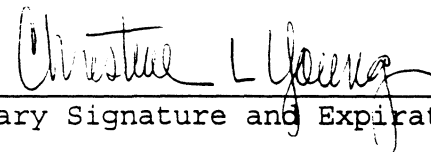
6. Not all of the custom stereo system could be salvaged. The components that were salvageable, were reinstalled in the vehicle my wife and I subsequently purchased. The cost to reinstall the stereo system was \$3,055.87 as shown in Tab X of the trial exhibit book.

7. Although my wife and I have received \$27,357.49 as payment for the loss of the Suburban, such monies do not compensate my wife and I for: the difference between the cost of the running boards (\$631.44) and the adjustment by USF&G (\$160.00) which totals \$471.44.; the difference between the cost of the stereo system (\$3,125.47) and the adjustment by USFG (\$1,505.00) which totals \$1620.47; and the \$3,055.87 incurred to reinstall the stereo system in the new vehicle. This equates to \$5,147.78 in damages which my wife and I have sustained related to the loss of the Suburban, which remains uncompensated.

Dated this 25th day of October, 2000.


Daniel Armstrong

In the County of Salt Lake, State of Utah, on this 25th day of October, 2000, before me, the undersigned notary, personally appeared Daniel Armstrong, who is known by me to be the person whose name is signed on the preceding document, and acknowledged to me that it is signed voluntarily for its stated purpose.

 2/25/00
Notary Signature and Expiration Date

Jared Armstrong - Rocky Mountain Verdicts & Settlements

Injury: Facial Scarring

Month	#	Specials	Total Award	Ratio
Aug 00	17	\$2,175.00	\$19,000.00	8.74
Mar 99	5	\$1,600.00	\$18,500.00	11.56
Apr 98	5	\$2,500.00	\$25,000.00	10.00
Feb 98	11	\$5,626.00	\$65,000.00	11.55
Feb 98	34	\$3,700.00	\$17,500.00	4.73

Average: 9.32

This Case \$2,778.78 Implies \$25,887.87

(WIGGINS vs. BROWN, CONT'D.)

during the afternoon of December 15, and into the next day. The jury found for Plaintiff, and awarded the following:

Past Medicals	\$27,036.87
Lost Income	\$5,000.00
<u>General Damages</u>	<u>\$20,000.00</u>
 Total	 \$52,036.87

OFFERS: No information provided.

0008 #16 -- CAR/PEDESTRIAN ACCIDENT - FACIAL LACERATIONS - \$25,000 POLICY LIMITS SETTLEMENT.

NELSON ARRAZABEL,

vs.

DOE.

Fourth District Court
Utah County
Judge
Case No. 003400290

PLAINTIFF'S ATTORNEY: Kevin J. Sutterfield, Mark T. Flickinger, FLICKINGER & SUTTERFIELD.
DEFENDANT'S ATTORNEY:
DEFENDANT'S INSURANCE: Farmers.
EXPERTS: None disclosed.
PLAINTIFF'S AGE: Minor. WORK: None.
FACTS: Plaintiff was crossing the street on June 8, 1999. Defendant, driving a car, was allegedly not paying attention to the road and was looking instead at two bicyclists. Defendant ran into Plaintiff.
INJURIES: Plaintiff suffered what were described as "severe facial lacerations" and required surgery.
SPECIAL DAMAGES: No information provided.
SETTLEMENT: This case settled for policy limits of \$25,000.

0008 #17 -- SINGLE CAR ACCIDENT - FACIAL SCARRING - \$19,000 SETTLEMENT.

TASHINA CARTER,

vs.

TIMOTHY CARTER.

Fourth District Court
Utah County
Judge Gary Stott
Case No. 003400289

PLAINTIFF'S ATTORNEY: Dwight C. Flickinger, FLICKINGER & SUTTERFIELD.

DEFENDANT'S ATTORNEY:

DEFENDANT'S INSURANCE: Liberty Mutual

EXPERTS: None disclosed.

PLAINTIFF'S AGE: Female, 13. WORK: None.

FACTS: Plaintiff was riding as a passenger in a car driven by her father, the Defendant, on November 21, 1994. Mr. Carter lost control of the vehicle at 90th South in Salt Lake County and ran off the road, into a concrete bridge structure.

INJURIES: Plaintiff suffered a facial scar.

SPECIAL DAMAGES: Plaintiff had past medical bills of \$1,225, and needed scar revision surgery at an estimated cost of \$950.

SETTLEMENT: This case settled for \$19,000.

0008 #18 -- CAR ACCIDENT - DENTAL INJURIES - \$11,500 SETTLEMENT.

JAKE HODGSON,

vs.

SHAUN LINDOW.

Fourth District Court
Utah County
Judge
Case No. 003400277

PLAINTIFF'S ATTORNEY: Harold L. Petersen, PETERSEN & HANSEN.

DEFENDANT'S ATTORNEY:

DEFENDANT'S INSURANCE: Farmers.

EXPERTS: None disclosed.

PLAINTIFF'S AGE: 17. WORK: Unknown.

FACTS: Plaintiff was riding as a passenger in a car that Defendant collided into.

INJURIES: Plaintiff suffered damage to three teeth, requiring crowns, a root canal, and a dental implant

SPECIAL DAMAGES: Plaintiff had dental bills of \$4,338
SETTLEMENT: This case settled for \$11,500

(Stoker vs. Salt Lake County, et al., Cont'd.)

and minor daughter. This lawsuit was brought under 42 U.S.C. Section 1983, alleging that the jail and its employees showed deliberate indifference to the medical needs of an injured inmate, and that this indifference led to the death of Stoker.

Special Damages: See verdict information.

Verdict: This case was tried to a federal jury several months ago. The jury returned a verdict in favor of Plaintiffs in the following amounts:

Estate of David Stoker

Medical Bills	\$111,000
Funeral Expenses	\$3,000
Lost Earnings	\$306,000
Pain and Suffering	\$90,000
Loss of Companionship	\$127,000

Laura May Stoker

Loss of Companionship	\$140,000
Lost Financial Support	\$20,000

Malea May Stoker - Daughter

Loss of Companionship	\$145,000
Lost Financial Support	\$40,000

Total	\$1,006,000
-------	-------------

In addition, the court awarded interest of \$116,862, attorney's fees of \$177,498, and costs of \$1,181, bringing the total judgment to \$1,301,541.

9903 #4 -- Pharmacy Malpractice - Dispensal of Improper Medication to Treat Endometriosis - \$10,000 Settlement.

Julee Roths,

vs.

Wal-Mart Stores, Inc.

U. S. District Court
District of Utah
Judge Dee V. Benson
Case No. 2:97 CV 61B

Plaintiff's Attorney: Scott N. Heidepriem (SD), Chad W. Swenson (SD), James R. Black.

Defendant's Attorney: Robert G. Gilchrist, Jeffery J. Devashrayee.

Plaintiff's Experts: Stephen Statz, Pharmacist (SD); _____ Walton, M.D. (SD), (Treating).

Defendant's Experts: Steven C. Meeks, M.D. (Treating).

Facts: Plaintiff while a South Dakota resident had been diagnosed and treated for a condition of endometriosis. She had been prescribed a medication known as "Depo Lupron" and had filled the prescription once while in South Dakota. The prescription was obtained by the Plaintiff, but mixed by her doctor at his office and injected. She was to receive one injection per month. Plaintiff then moved to Utah and went to a Wal-Mart store in Layton to have the prescription refilled. The pharmacy erroneously dispensed a medication known as "Lupron Daily Sub Que". This is a similar medication, but the dosage must be provided much more frequently. Not knowing that the wrong medication had been dispensed, Plaintiff received the dosage on a monthly basis. Later, upon discovering the error, Plaintiff alleged that her endometriosis treatments had failed as a result. This allegation was disputed by her treating doctor in Utah, who noted that a second course of treatment with the correct medication also failed to resolve the problem. This doctor asserted that the medication had not helped Plaintiff, but had not caused her any harm either.

Special Damages: No information provided.

Settlement: This case settled for \$10,000.

9903 #5 -- Dog Bite - 47 Stitches in Forearm - \$18,500 Settlement.

Derek B. Simpson, a minor, by and through his parent and guardian, Teri E. Simpson,

vs.

Shuree Taylor and Rich Coffin.

Second District Court
Weber County
Judge Pamela G. Heffernan
Case No. 970902168

Plaintiff's Attorney: Russell T. Doncouse.

Defendant's Attorney: David R. Hamilton, Gary R. Williams, Stephen F. Noel.

Experts: None disclosed.

Facts: Plaintiff was walking home from school in Roy, Utah, on the afternoon of April 24, 1996. He saw some friends playing in the street in front of Defendant's home and stopped to talk. He leaned his arm against a wooden fence surrounding Defendant's yard. A pit bulldog owned by Defendants jumped up, grabbing Plaintiff's forearm and clamped down, refusing to let go. Plaintiff pounded

(Simpson vs. Taylor and Coffin, Cont'd.)

on the dog's snout until it finally fell to the ground, ripping the flesh as it did so.

Injuries: Plaintiff had a severe "T"-shaped laceration on his forearm, a total of 11 cm. in length. The wound required 47 stitches.

Special Damages: Plaintiff had medical bills of \$1,600.

Settlement: This case settled for \$18,500.

9903 #6 -- Trip and Fall - Knee Injury with Surgery - Defense Verdict.

L Lee Lewis,

vs.

Centerville Riviera Townhouse Association, et al.

Second District Court
Davis County
Judge Darwin C. Hansen
Case No. 970700491

Plaintiff's Attorney: Bennett P. Peterson.

Defendant's Attorney: Paul H. Matthews, Jill Zender.

Plaintiff's Experts: Gordon Affleck, M.D., John C. Edwards, M.D.

Defendant's Experts: None disclosed.

Facts: Plaintiff, a 62-year-old woman, tripped and fell over a speed bump in a roadway at the Centerville Riviera Townhouses on November 8, 1994. The accident occurred after dark at 7:30 p.m. Plaintiff alleged that the condominiums provided inadequate lighting and no alternative walkways. The condominium apparently relied on "spillover" lighting from an adjacent schoolyard, whose lights were out when this accident occurred. The defense argued that Plaintiff fell as a result of losing her balance. They were able to produce medical records showing Plaintiff had earlier been diagnosed with a brain tumor, with correspondence from a physician discussing "imbalance" Plaintiff suffered as a result. Plaintiff and her current doctors testified that she was not experiencing any problems with balance at the time of this incident.

Injuries: Plaintiff suffered a gash on her head, a fractured bone in her right hand, a sprained left wrist, and injury to her right knee which has required two surgeries and will at some point require total knee replacement.

Special Damages: Plaintiff had medical bills of \$12,427.87, and lost wages of \$1,629.96.

Verdict: This case was tried to verdict in one day, January 4, 1999. The jury was out less than an hour before returning with its verdict in which it found neither Plaintiff nor Defendant to have been negligent.

9903 #7 -- FELA Claim - Back Injury - \$115,500 Settlement.

Hassell,

vs.

Southern Pacific Transportation Company.

Second District Court
Weber County
Judge
Case No. 960900092

Plaintiff's Attorney: Richard I. Ashton, John C. Rossi.

Defendant's Attorney: E. Scott Savage.

Experts: None disclosed.

Facts: Plaintiff was employed as a laborer with the railroad. He hurt his back while lifting a heavy cement object. He alleged he was not provided proper tools and/or assistance.

Injuries: Plaintiff suffered an unspecified injury to his back. He did not require surgery and was able to return to work.

Special Damages: No information provided.

Settlement: This case settled for \$115,500.

9903 #8 -- Construction Accident - Large Metal Plate Amputates Foot above Ankle - \$2,020,000 Verdict.

Michael Garrett,

vs.

Trench Shoring Services, Inc., et al.

Third District Court
Salt Lake County
Judge Leslie Lewis
Case No. 950908053

Plaintiff's Attorney: Richard K. Glauser, Robert Lunn

Defendant's Attorney: Donald J. Purser

Plaintiff's Experts: James Morgan, M.D., Orthopedic Surgeon; James Liston, Prosthetist; Scott Kimbrough, Ph.D., Mechanical Engineer; Charles Pitt, Ph.D., Metallurgist; Steve Nicolatus, Economist; Stephen Anderson, Life Care Planner.

Defendant's Experts: Merrill Steed, Construction Expert, Rex Paulsen, Ph.D., Mechanical Engineer, Dennis Spencer, Mechanical Engineer; John Janzen, Ph.D., Vocational Rehabilitation.

Facts: Plaintiff was a construction worker in his late-20's. He was assisting in the placement of a 2,000 lb. metal

9804 #4 -- Plaintiff Rear-ended While Waiting to Turn Right - Disc Injuries.

Jolene S. Zoellner,

vs.

Thomas A. Brennan and Servicemaster Contract Services, Inc.

Third District Court
Salt Lake County
Judge J. Dennis Frederick
Case No. 960908652

Plaintiff's Attorney: John Edward Hansen, Wesley D. Hutchins.

Defendant's Attorney: Tim Dalton Dunn, Michael J. Walk.

Plaintiff's Experts: Michael Goldstein, M.D., Neurologist; Thomas E. Soderberg, M.D., Orthopedic Surgeon; Greg Duval, Accident Reconstruction.

Defendant's Experts: Thomas D. Houts, M.D., Neurologist; Newell Knight, Accident Reconstruction.

Facts: Plaintiff was a woman in her early-40's. She was traveling eastbound on South Temple in Salt Lake City, approaching its intersection with State Street. She was planning to turn right, but stopped to wait for a northbound vehicle on State Street which was making a U-turn to go southbound. Defendant Brennan rear-ended her vehicle. Speed of impact was estimated at 2-6 mph. Damage to both vehicles was minimal or non-existent.

Injuries: Plaintiff was diagnosed with a herniated disc at C5-6, and bulging discs at L4-5 and L5-S1. She complained of neck and back pain, headaches, and numbness in her right arm and right leg. She had not had surgery, but had undergone epidural nerve block injections. Defendant argued that this accident did not cause the injuries, and pinned the blame on prior accidents. Plaintiff claimed that she had completely recovered from her prior injuries. Dr. Soderberg gave Plaintiff a whole person impairment rating of 17% which he related entirely to this accident.

Special Damages: Plaintiff had medical bills in excess of \$13,000.

Verdict: This case was tried to a jury on March 3-5, 1998. The jury ruled in Plaintiff's favor on liability, and awarded past medical bills of \$3,958.37, plus one dollar in general damages.

Offers: Defendant offered to settle before trial for \$25,000. Plaintiff demanded \$50,000.

9804 #5 -- DUI Defendant Turns Left in Front of Plaintiff - Airbag Causes Facial Scarring, Hearing Problems.

Jill Ruh,

vs.

Tero T. Shirai.

Second District Court
Davis County
Judge Glen R. Dawson
Case No. 970700101

Plaintiff's Attorney: Warren W. Driggs.

Defendant's Attorney: John Edward Hansen.

Experts: None disclosed.

Facts: Plaintiff, a young woman, was westbound on 650 North in Clearfield on March 15, 1995. She claimed that the Defendant turned left in front of her as he tried to enter the freeway on-ramp. She also claimed that Defendant was under the influence of alcohol at the time.

Injuries: The airbag in Plaintiff's car exploded into her face and caused permanent scarring. She also claimed that her hearing had been damaged, as she experienced persistent tinnitus. She also complained of neck and back soft tissue symptoms.

Special Damages: Plaintiff alleged medical bills of \$2,500

Settlement: This case settled for policy limits of \$25,000

9804 #6 -- Store Employee Runs Cart Over Plaintiff's Foot - Hairline Fracture.

A. G. Hawkins,

vs.

Smith's Food & Drug.

Fourth District Court
Utah County
Judge Donald J. Eyre
Case No.

Plaintiff's Attorney: Gary J. Anderson.

Defendant's Attorney: Robert H. Henderson.

Plaintiff's Experts: _____ Jefferies, DPM, Podiatrist

Defendant's Experts: None disclosed.

Facts: Plaintiff was an older man in his 70's. He was inside a Smith's store in the Utah County area when he alleged that a store employee ran over his foot with a shopping cart. Defendant argued that the employee was a retarded girl hired by the store who was being closely supervised at the time of the incident by her "job coach"

9802 #10 -- Car/Pedestrian Accident - Fracture to Lower Leg.

Autumn Loya, a minor child,

vs.

Philip Lay.

Second District Court
Davis County
Judge
Case No. 983700032

Defendant's Attorney: Mark J. Taylor.

Defendant's Insurance: State Farm.

Experts: None disclosed.

Facts: Plaintiff was a junior high-aged girl. She was crossing the intersection of Church Street and Golden Avenue in Layton on January 16, 1997, when she was struck by a vehicle driven by Philip Lay. There was no dispute on liability.

Injuries: Plaintiff suffered a fracture to the tibia or fibula bone in her lower leg which was casted for several weeks.

Special Damages: Plaintiff had medical bills of \$3,521.68.

Settlement: This case settled for \$7,000, on top of medical bills which were all paid by Defendant's insurance.

9802 #11 -- Young Girl Hit by Car While Walking on Sidewalk - Scars on Legs, Soft Tissue Injury.

In the matter of the Estate of Brianna Bamey.

Second District Court
Davis County
Judge Jon J. Memmott
Case No. 973700313

Plaintiff's Attorney: Richard H. Thornley.

Defendant's Attorney:

Experts: None disclosed.

Facts: Plaintiff was a 10 year old girl. She was walking along a sidewalk when she was struck by a car which was exiting an underground parking structure. The driver's view of the sidewalk was somewhat obscured by a retaining wall near the exit. Plaintiff claimed that the driver had to be sure the sidewalk was clear before exiting.

Injuries: Plaintiff suffered soft tissue neck and back injuries. She also suffered injuries to her legs which left scarring and required scar revision surgery.

Special Damages: Plaintiff had past medical bills of \$4,156, and claimed that she would require future physical therapy amounting to \$1,500.

Settlement: This case settled for \$65,000.

9802 #12 -- Defendant Can't Stop, Slides Into Intersection - Neck, Back, Shoulder Injuries.

Ilene H. Painter,

vs.

Christine L. Boynton and Alan Boynton.

Second District Court
Davis County
Judge Darwin C. Hansen
Case No. 960700067

Plaintiff's Attorney: Timothy C. Houpt.

Defendant's Attorney: A. John Witkowski.

Experts: None disclosed.

Facts: Plaintiff, a teacher's aide in a school for handicapped children, was southbound on Fort Lane in Layton on February 14, 1995. She was proceeding through the intersection of 2000 North when she was struck by Christine Boynton, a minor, who had allegedly run a stop sign. The roads were snowy and slippery, and Defendant skidded in the slippery conditions into the intersection. Liability was not disputed.

Injuries: Plaintiff suffered unspecified injuries to her neck, back and shoulder. She also complained of headaches.

Special Damages: Plaintiff had medical bills in excess of \$13,500. She also claimed lost wages of \$7,000.

Settlement: This case settled for \$50,000.

9802 #13 -- Bicyclist Hit by Semi-Truck - Fractured Pelvis, Road Rash.

Manuel Beltran,

vs.

Cedar Storm Calcite and Clay, Inc., and Arvin Bert Carter.

Third District Court
Salt Lake County
Judge Glenn K. Iwasaki
Case No. 960900589

Plaintiff's Attorney: Timothy C. Houpt.

Defendant's Attorney: Robert H. Henderson, Robert C. Keller.

Plaintiff's Experts: Daniel S. Horwitz, M.D., Virginia Simnad, M.D.

Defendant's Experts: Newell Knight, Accident Reconstruction.

9802 #34 -- Intersection/Turning Accident - Scaring, Emotional Trauma.

Nathan Thayne,

vs.

Shauna Brackenbury.

Fourth District Court
Utah County
Judge Anthony W. Schofield
Case No. 970400423

Plaintiff's Attorney: G. Steven Sullivan.

Defendant's Attorney: Wendell E. Bennett.

Experts: None disclosed.

Facts: Plaintiff was an 18 year old drywall laborer. He was traveling northbound on State Street in Pleasant Grove on August 26, 1996. He alleged that the Defendant pulled out from a stop sign to turn left and collided with his vehicle, with his vehicle then pushed into a third vehicle coming from the opposite direction. The third vehicle rolled and the driver of that vehicle was killed. Liability was disputed.

Injuries: Plaintiff suffered multiple scars to his face and right arm. He also claimed emotional trauma resulting from the accident.

Special Damages: Plaintiff had medical bills of \$3,700, and claimed lost wages of \$2,781.

Settlement: This case settled for \$17,500.

9802 #35 -- Slip and Fall on Ice Outside Restaurant - Knee Injury.

Jana Bliss,

vs.

Snowstate Restaurant Corporation, dba Chili's Southwest Grill.

Fourth District Court
Utah County
Judge Donald Eyre
960400328

Plaintiff's Attorney: Noall T. Wootton.

Defendant's Attorney: William R. Rawlings.

Plaintiff's Experts: Max Lundberg, M.D., Rheumatologist; Douglas Schow, M.D., Orthopedic Surgeon.

Defendant's Experts: Wm. Patrick Knibbe, M.D., Rheumatologist.

Facts: At 1:30 p.m. on January 11, 1996, Plaintiff and

several friends were leaving Defendant's restaurant in Orem after eating lunch. Plaintiff slipped and fell on an icy cement walkway outside the restaurant. She claimed that the Defendant failed to maintain the walkway properly, failed to give notice of the dangerous condition, and failed to implement reasonable and necessary safety features or procedures. Defendant claimed it had no knowledge of the dangerous condition and therefore no duty to take corrective action, and further claimed that Plaintiff failed to observe the open and obvious condition. **Injuries:** Plaintiff suffered an injury to her knee. She had a pre-existing condition of rheumatoid arthritis in that knee. Approximately one year after this accident she suffered a fractured hip while trying to move a motorcycle which fell on her. She claimed this was related in that her knee gave out, causing her to fall with the motorcycle falling on top of her.

Special Damages: Plaintiff had medical bills of \$2,500 related to the initial knee injury, and claimed an additional \$2,500 related to the later hip injury. There was also evidence that knee replacement surgery might be required in the future. As to wages, Plaintiff worked as a counselor at a junior high school. She missed about six days of work.

Verdict: This case was tried for three days, from February 2-4, 1998. The jury deliberated 3:21 hours and returned with a verdict of no liability.

Offers: Defendant offered to settle before trial for \$4,000. Plaintiff did not make any offers.

9802 #36 -- Intersection Accident, Dispute Over Color of Light - Soft Tissue Injuries.

See Vang,

vs.

Annette D'Agostini and Patricia Martell.

Fourth District Court
Utah County
Judge Howard H. Maetani
Case No. 970400094

Plaintiff's Attorney: Tad D. Draper.

Defendant's Attorney: Robert H. Henderson for D'Agostini, J. Rand Hirschi for Martell.

Experts: None disclosed.

Facts: Plaintiff was a young woman riding as a passenger in a car driven by Defendant Martell on June 13, 1996. Martell was turning left at the intersection of 2250 North and University Avenue in Provo when she collided with D'Agostini who was coming through the intersection. Martell claimed the light had already turned red and that

MGD Management, Inc.
Marshall-Gilfillan Disability Management
2133 East 9400 South, Suite 140
Sandy, UT 84093
(801) 944-2311

VOCATIONAL AND REHABILITATION REPORT

CLIENT: Taylor M. Armstrong

DOB: October 4, 1989

DOI: January 7, 1996

DISABILITY: Traumatic Brain

DATE: October 23, 2000

BACKGROUND

Reason for Referral

Taylor Armstrong was referred for a rehabilitation assessment and loss of earning capacity evaluation. He was seen in his home and observed interacting with siblings. Interviews were conducted with his parents and Taylor. An emergency medical report and school records were reviewed as a part of this assessment. Also reviewed were a neuropsychological report and deposition of Dr. Erin Bigler, Ph.D.

Social History

Taylor Armstrong was born October 4, 1989 in Salt Lake City, Utah. He is the sixth child of seven to Daniel and Lorene Armstrong. Taylor's father, Daniel J. Armstrong is 48 years old and is employed full time as a Certified Public Accountant. He has been an accountant for twenty years. Mr. Armstrong reports earning approximately \$10,000 per month or \$120,000 per year. He is a college graduate and earned a Bachelor's Degree from Brigham Young University. Mrs. Armstrong is age 45 and also a BYU graduate.

Taylor's oldest sibling is Daniel "Joshua" Armstrong, age 21. He is currently a student at Salt Lake Community College and working as a sales associate for the Men's Wearhouse. Taylor's next sibling is Jared Armstrong, age 20. Jared graduated from Taylorsville High School with a G.P.A. of 4.0 and was nominated as a Sterling Scholar. He is currently serving on an LDS Mission in Granada and will be attending Brigham Young University on an academic scholarship when he returns. The next sibling in Taylor's family is Carrie Armstrong. She is a senior at Taylorsville High School. She is also an honor student with a G.P.A. of 3.98. Brittany Armstrong, age 15, is Taylor's next sibling. She is a sophomore at Taylorsville High School with a G.P.A. of 3.8. The next sibling is Lysie Armstrong who is 13 attending the eighth grade at Bennion Jr. High. Taylor's final sibling is Joel Armstrong, age 5. Joel attends Kindergarten and functions as a typical five-year-old boy.

Taylor's paternal grandfather worked as a barber and had two years of college education. His paternal grandmother had one year of college and worked as a homemaker and artist. Taylor's two paternal aunts each work as homemakers and have had three years of college

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education each. One of Taylor's paternal uncles is employed as a Dentist and had postgraduate training. His other paternal uncle is a business owner/manager of a construction equipment rental business. Taylor's maternal grandfather is a retired engineer from General Electric Company and a graduate of Massachusetts Institute of Technology. Taylor's maternal grandmother is a High School graduate and worked as a homemaker and secretary. Taylor's maternal uncle is a Dentist with postgraduate training and his maternal aunt holds a Bachelor of Science degree in Mathematics and currently works as a homemaker.

According to his parents, Taylor was developing normally with no physical or cognitive problems. They indicated that he was able to write, spell and read his name and that he could identify the letters of the alphabet and had mastered pre-reading skills. They also indicated that he was quite coordinated, could ride a bicycle and typically ran everywhere he went.

Medical History

On January 7, 1996, Taylor was a back seat passenger in a family's vehicle when it was struck from the side by another vehicle. Taylor lost consciousness on several occasions at the scene and required transport to the nearest hospital. He was taken by ambulance to Pioneer Valley Medical Center emergency room.

Taylor had X-rays taken of his cervical spine. He was then sedated with Demerol and Phenergan for a CT scan of his head. The scan indicated superficial swelling of the scalp but no evidence of intracranial swelling. He was diagnosed with closed head injury with concussion, right ear contusion, scalp abrasions and punctures, and neck trauma. Taylor was discharged to the care of his parents with a list of signs and symptoms with which to be aware.

Taylor received no further medical treatment for his injuries. However, his parents noted an immediate change in Taylor's eye-hand coordination and general motor coordination, as well as a loss of previously learned pre-reading skills. Billing records indicate further diagnostic testing in the form of MRI on February 22, 1996. However those results were not available.

Taylor was evaluated by Dr. Erin Bigler, neuropsychologist in June 1999. Dr. Bigler administered a battery of neuropsychological tests and determined that Taylor sustained a traumatic brain injury on January 7, 1996, which disrupted functions of verbal language ability, impulse control, and right side motor coordination. These findings suggest residual deficits in left hemisphere functioning. According to Dr. Bigler, Taylor will continue to struggle with these deficits and will require ongoing intervention and treatment modalities to compensate for these deficits.

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Records Reviewed

Pioneer Valley Hospital Emergency Department, 1/7/96

Gold Cross Ambulance, 1/7/96

Neuropsychological Consultation Report, Erin D. Bigler, Ph.D., July 7, 1999

Letter to Mr. & Mrs. Dan Armstrong from Erin D. Bigler, Ph.D., July 8, 1999

Letter to Robert Wilde from Erin D. Bigler, Ph.D., November 29, 1999

Office Notes of Dr. Scott Smith and Dr. Glen Fuller, 1/27/96 and 2/1/96

Deposition of Erin D. Bigler, October 4, 2000

FUNCTIONAL ASSESSMENT

Pre-injury Functioning

Prior to his injury, Taylor was attending the Kindergarten at Harry S. Truman Elementary. He was considered an average student and "up to speed" on pre-reading and writing skills. Taylor was participating fully in this program. He had no special learning needs and was progressing at grade level.

Present Status

Taylor is an eleven-year-old male who lives with his parents and five other siblings in Taylorsville, Utah. He is now impaired in his reading ability and slightly impaired with respect to motor functioning. His most recent IQ testing revealed a verbal IQ of 89 and a Performance IQ of 108. According to his parents, this is significantly below his pre-injury functioning. Following the accident, Taylor's parents noted that Taylor had forgotten his ABC's and could no longer write his name. These were skills he had learned in preschool. Now Taylor is delayed in his reading ability. According to his school records, his reading ability has improved but he still struggles with it and continues to require remedial help from his parents and educational program. The most recent Stanford Achievement Test available dated October 1999 indicates that his reading comprehension is at 34 percentile for his grade level. This is considered low-average. Taylor is also speech delayed and has received speech therapy at school for several years.

Taylor now experiences problems with motor coordination. His parents indicated that he was a very active and coordinated child prior to the accident. Following the accident, he slowed down considerably and could no longer kick a ball or swing a bat to hit a ball. He is not confident in his motor skills and experiences failure in team motor activities. His parents have, since, wisely enrolled Taylor in a karate class. Taylor's father relates that Taylor even has difficulty riding his bicycle and that his five-year-old brother is more proficient on the bicycle than Taylor.

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All of Taylor's siblings do well in school and several have excelled in school. They all report having enjoyed their educational programs. Taylor, on the other hand, relates that he is not excited about school. His favorite thing to do is karate. His least favorite thing to do is language/English skills.

Taylor is also delayed socially, likely as a result of his problems with reading and motor functioning. He has very few friends and all of his friends are at least one year younger than Taylor.

As with many brain injured children, the deficits with which they experience in childhood become more problematic in their teen years. This will be important for this family and teachers to be aware of and anticipate. Dr. Bigler indicates that Taylor will require on-going intervention to learn to overcome and/or compensate for his brain deficits.

REHABILITATION RECOMMENDATIONS

Medical/Diagnostic Services

Taylor suffered a mild traumatic brain injury. According to Dr. Bigler, children with this type of traumatic brain injury should be carefully monitored for an extended period of time. He recommended that Taylor receive routine follow-up neuropsychological services in 6-12 month intervals.

Neuropsychological Follow-up per Dr. Bigler

Now and subsequently every year until age 16 or 18 @ \$500 to \$600

Adjustment and Behavioral Counseling Services (per Dr. Bigler)

Taylor probably recognizes that he is different from his classmates and siblings in his skill level and capabilities. Although he receives support and encouragement from his parents, he likely suffers from a lack of self-esteem or self-confidence. At some point, he may become overwhelmed with the stress of being different or "left out" socially. At these times, Taylor would benefit from some psychosocial support services that would help him work through feelings of frustration and learn confidence-building strategies. He may also benefit from a behavioral program that provides high levels of feedback to help him learn to regulate his behavior or reaction to others' behavior when being teased.

6 to 12 sessions of counseling and management techniques @ \$125 to \$150 per session. (3 or 4 times throughout adolescence)

Special Education Tutoring through age 14

Taylor has had to adapt and compensate for his reading and motor deficits. His parents have helped him tremendously in this area. Both Taylor's parents work with him individually every day on his reading skills. This is above and beyond the time spent with

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their children on regular homework activities. He also receives a great deal of support from his siblings and schoolteachers. However, this is a task that would not normally have to be administered in the family. Without this intervention, Taylor would likely fall way behind with his reading. In order to maintain the gains that Taylor has made over the past five years, he continues to require the services of a private tutor.

Reading Tutor, 5 hours per week, 32 weeks per year @\$25 to \$35 per hour

VOCATIONAL ANALYSIS

Prior to his accident, it was anticipated that Taylor would have graduated from high school with average to above average grade point average like his siblings and completed a college degree like his father and uncles. It would also be anticipated that Taylor would be employed in an occupation with the same skill level or greater than that of his father and uncles. Taylor also would be eligible for typical opportunities for career advancement.

Taylor has been having difficulty in reading and motor coordination since his injury and while he tries to cope with the deficits, he has struggled with his educational development and independence. As the scholastic demands on reading increase throughout Jr. High and high school, Taylor will likely experience more difficulty academically. He will likely have more problems trying to keep up with his peers than he now experiences. As a result, he may become discouraged in school and fall further behind. With his supportive family, hopefully, Taylor can seek other avenues of success. Currently, Taylor is able to maintain his reading skills with a great deal of remedial assistance. At some point when his entire educational program requires individual reading, complex verbal processing, and critical composition skills, Taylor will likely experience increased frustration and possible failure. With these types of struggles, Taylor is not likely to be successful in completing a four year college degree or greater like his parents, aunts, uncles and siblings. He may be capable of completing an Associate of Science degree but more probably trade school training where training is more "hands on", performance based and less verbal comprehension.

Discussion

With mild brain injury, the problems effecting employability and the ability to maintain appropriate employment are often quite subtle. The loss of verbal skills may not be the primary problem in work situations following a brain injury, but rather the difficulty in social and emotional functioning. Brain injuries in children often delay social and emotional development and result in lowered frustration tolerance. Often people who have had brain injuries require longer to learn new information or to process information they are given to arrive at a conclusion or make a decision. These problems could cause

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misunderstandings as employers misinterpret a slowed response as lack of motivation or incentive to work.

Given his current problems and the likelihood of these problems persisting throughout adolescence and adulthood, it is anticipated that Taylor will experience a loss of earning capacity compared to his pre-injury potential. It is assumed that he would have been capable of obtaining a Bachelor of Science degree like that of his parents, aunts, uncles and siblings. Since the injury and the persistent problems he has had with reading Taylor is not likely to attain the same level of vocational achievement as his parents, uncles and siblings. His current anticipated level of vocational achievement will likely be somewhere in the range of jobs requiring trade school training and/or an Associate of Science degree. Even though he may not be able to successfully complete a college degree, it is anticipated that he will find some suitable employment in a less sophisticated occupation and be employed in a full-time permanent capacity offering typical employee benefits.

Vocational Evaluation, Training, and Placement beginning at age 16

With Taylor's special reading and communication concerns, he would greatly benefit from a comprehensive vocational assessment that could help him identify vocational options that would correspond with his interests and aptitudes.

Vocational Assessment, at age 16 or 18

Extended assessment @ \$975 to \$1,200 each

Another consideration for Taylor may be for the cost of vocational training. Because reading and studying are such a challenge for Taylor, he may lack the ability to work while training for a vocation. Taylor's father financed his education by working. This is currently how his eldest brother is financing his college/vocational education, as well. Taylor's next brother will be obtaining his college education through academic scholarship. It is likely that his siblings will be able to obtain their college educations by working and/or utilizing academic scholarships. Taylor will not likely have this opportunity. The current costs for post-secondary education range from \$60 to \$120 per credit hour. For trade school or community college training, costs range from \$6,000 to \$12,000 for individual vocational programs.

The above recommendations for services include those services reasonably required to maximize Taylor's compensatory rehabilitation following his brain injury and subsequent deficits. These recommendations are based on Taylor's current disability status and neuropsychological assessment as well as consideration for potential needs for anticipated functioning as outlined in Dr. Bigler's deposition. This information was also utilized to determine Taylor's loss of earning capacity compared to pre-injury potential.

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Costs for services in this plan are based on the average or standard rates for these services in the Salt Lake metropolitan area. If you have questions or need additional information, please contact me.

Respectfully,



Terri L. Marshall, M.S., CRC, CCM, CLCP
Rehabilitation Consultant

TERRI L. MARSHALL-GILFILLAN
2133 East 9400 South, Suite 140
Sandy, Utah 84093
(801) 944-2311

EDUCATION

Master of Science
May 1988

SOUTHERN ILLINOIS UNIVERSITY
Carbondale, Illinois
Major: Rehabilitation
Administration and
Services

Bachelor of Science
May 1985

SOUTHERN ILLINOIS UNIVERSITY
Carbondale, Illinois
Major: Communication
Emphasis: Organizational
Communication

Associate of Science
May 1983

LINCOLN LAND COMMUNITY COLLEGE
Springfield, Illinois
Major: Behavior Science
Emphasis: Criminal Justice

PROFESSIONAL EXPERIENCE

President/Manager/Counselor, 1995 to present, *MGD Management, Inc., Sandy, Utah*. Provide rehabilitation counseling, vocational assessment, rehabilitation case management and life care planning services to individuals with disabilities of all ages.

Managing Rehabilitation Counselor, 1992 to 1995, *Rehabilitation Counselor, 1987 to 1992. Re-Entry Rehabilitation Services, Inc., Lakewood, Colorado*. Conduct vocational and developmental assessments; responsible for life care and rehabilitation planning; provide case management, coordination, and referral services to children and adults with disabilities.

Vocational Rehabilitation Specialist, 1987. *Intracorp, Springfield, Illinois*. Assisted in conducting agency vocational evaluations; assisted with supervision and management of cases; helped plan and organize awarded case management grant.

Vocational Coordinator, 1985 to 1986. *Alternative Homes for Youth, Golden, Colorado*. Provided employment readiness, and vocational and affective counseling to adolescents with emotional and behavioral disabilities; coordinated and developed work sites and career options for agency youth; planned and organized awarded JTPA grant.

Assistant Employment Coordinator, 1985. *Southern Illinois Community Correctional Center, Carbondale, Illinois*. Counseled ex-offenders in job hunting plans and employment readiness; assisted with job development and placement coordination.

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TERRI L. MARSHALL-GILFILLAN

CERTIFICATIONS

- Certified Rehabilitation Counselor #27029
- Certified Case Manager #15668
- Certified Life Care Planner #0248

PROFESSIONAL DEVELOPMENT AND CONTINUING EDUCATION

- "Evaluating Disability Seminar", ReEntry Vocational Services, Inc., 1988, 1989, 1990, 1991, 1992, Denver, Colorado
- "Fourth National Forum on Issues in Vocational Assessment", Vocational Evaluation and Work Adjustment Association, 1989, St. Louis, Missouri
- Colorado Rehabilitation Association Annual Conference, 1988, Vail, Colorado
- Worker's Compensation Education Association Annual Conference, 1989, 1990, 1991, 1992, Denver, Colorado
- "Infant and Early Childhood Assessment", University of Colorado, Fall 1990, Denver, Colorado
- "Colorado Post-Polio Educational Conference", Colorado Easter Seals Society, 1991, Denver, Colorado
- Pediatric Spinal Disability Conference, Denver Children's Hospital, 1991, Denver, Colorado
- "Comprehensive Life Care Planning For Catastrophic Injuries", The Rehabilitation Training Institute, 1991, Las Vegas, Nevada
- "Celebrating the Family", Association for Community Living (ARC), 1992, Denver, Colorado
- "Litigating the Head Injury Case in the 90's", Utah State Bar Association and the Utah Head Injury Association, 1992, Salt Lake City, Utah
- Annual Professional/Family Conference, Brain Injury Association of Utah, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, Salt Lake City, Utah
- "Closing the Gap: Microcomputer Technology in Special Education and Rehabilitation", 1993, Minneapolis, Minnesota
- "12th Annual Sheldon Berrol Brain Injury Symposium", Utah Head Injury Association, 1994, Salt Lake City, Utah
- "Medical Case Management Conference VI", Individual Case Management Association, 1994, San Diego, California
- "Intensive Spinal Cord Injury Rehabilitation Workshop", Casa Colina Centers for Rehabilitation, 1995, Palm Springs, California
- "When the Dust Settles: Responses to Healthcare Reform", Casa Colina Centers for Rehabilitation, 1995, Palm Springs, California
- Annual Conference, Utah Case Manager's Association, 1995, 1997, 1999, Salt Lake City, Utah
- "Life Care Planning for Advanced Case Management", Certificate Program, Intelicus-Rehabilitation Training Institute, University of Florida, 1998, Ocoee, FL
- 1996 National Conference and Exposition, National Association of Rehabilitation Professionals in the Private Sector, 1996, Bal Harbour, Florida
- "Forensic Issues in Rehabilitation", E & F Publishers, 1999, Las Vegas, Nevada

Page 3

TERRI L. MARSHALL-GILFILLAN

PROFESSIONAL ASSOCIATIONS

- Brain Injury Association of Utah, past vice-president, 1993
- Utah Case Manager's Association
- National Association for Rehabilitation Professionals in the Private Sector

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October 25, 2000

Robert H. Wilde
Wilde & Associates
935 East South Union Avenue, # D-102
Midvale, UT 84047-1293

Re: Taylor Armstrong

Dear Mr. Wilde:

We have completed our evaluation of the economic losses sustained by Taylor Armstrong and/or his parents as a result of closed-head injuries he sustained in an automobile accident on January 7, 1996. These losses consist of the present value of his diminished earnings capacity and associated benefits; and the present value of medical and training expenses that he is expected to incur between now and the time he is 18-21 years of age.

Given the serious nature of his injuries it is certain he has incurred substantial medical expenses between the date of his accident and the date of this report, though we have not seen evidence of such costs. Since some or all of these costs may have been paid by third parties who will exercise subrogation claims against other amounts received in settlement or by judgment it may be particularly important to accurately summarize and recover those costs.

To eliminate the problems of dealing with fractional parts of months we have computed all values as of November 1, 2000. It is, of course, a simple matter to adjust these values to any future settlement or trial date. On this date it is our opinion that the present value of economic loss created as the result of his injuries is not less than \$322,329, and is probably at least \$668,458.

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Taylor Armstrong, page 2

Each of the facts and/or assumptions upon which our estimates of economic loss were based is summarized below.

Facts and Assumptions Used in Estimating Values of Losses

1. Taylor was injured in an automobile accident on January 7, 1996. After being treated for what seemed to be minor injuries his parents noticed deficits in his normal cognitive functioning that seemed to be affecting his ability to learn. At a later date he was diagnosed with traumatic brain injury that is expected to affect him for the rest of his life.
2. Taylor was born on October 4, 1989, and was 6 26 years of age at the time of the accident. 4.82 years have elapsed since the accident, making his attained age 11.08 years on the computational date of this report.
3. Based on his attained age Taylor's normal age of death is 74.18 years. (*Vital Statistics of the United States*, U.S. National Center for Health Statistics, 1995) We have assumed that his normal life expectancy is not affected by the accident, though none of our computations are affected by life expectancy.
4. Based on the educational attainments of his parents and siblings we have assumed Taylor normally would have completed not less than 16 years of formal education, and probably would have continued his education to at least the attainment of a master's degree. For purposes of computation we have assumed he would have normally entered the labor force with a baccalaureate degree at age 24 after completing his education and a two-year mission for the Church of Jesus Christ of Latter-day Saints. Alternatively we have estimated his normal earnings after entering the labor force at 25 with a master's degree.
5. Based on the most current worklife statistics he would, at age 24, have had 36.6 years of worklife remaining, normally exiting the workforce at approximately age 60.68. At age 25, with a master's degree, he would have had 35.9 years of worklife remaining, exiting the labor force at age 60.90. (*The New Worklife Expectancy Tables, Revised 1998*, Vocational Econometrics, Inc, Louisville, 1998.)
6. Upon entering the labor force we have assumed he would normally have earned wages equal to the average annual earnings for holders of four-year or master's degrees, respectively, for the balance of his worklife. These data, in 1997 dollars, are shown in Table 2. (*Mean Annual Income by Highest Degree Earned*, U.S. Bureau of the Census, 1997.)

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Taylor Armstrong, page 3

7. In future years his wage would normally have grown at an annual rate of 4.75%, the average rate of wage growth for all U.S. workers over the 25-year period 1975-1999. (*Establishment Hours and Earnings*, U.S. Department of Labor, Bureau of Labor Statistics. See Table 1.)
8. In a vocational and rehabilitation report dated October 23, 2000, Terry Marshall-Gilfillan expresses the opinion that Taylor will be able to continue educational pursuits, but will ultimately be limited to more "hands-on training" in a vocational or associates degree program.
9. Based on that opinion we have assumed that his impaired capacity to earn will be equal to average earnings for holders of associate's degrees. These data are also shown in the attached Table 2.
10. The annual losses of earnings sustained by Taylor are assumed to be the differences between his normal capacity to earn with a four-year degree or master's degree, mitigated by the lower wages earned with an associates degree or with vocational training.
11. In addition to the losses of income he is expected to suffer, he will also sustain a partial loss of the value of fringe benefit programs in which he would normally have participated. Based on data compiled by the U. S. Department of Labor, the value of fringe benefit programs in the types of jobs held by white collar workers is equal to 23.83% of a workers wage bill, while benefits earned by blue collar workers have a cost of 22.28% of such a worker's wages. (*Employer Costs for Employee Compensation, March 1997*, USDL 97-371, U.S. Department of Labor, Bureau of Labor Statistics, October, 1997.) We have applied those costs to our projections of normal and impaired wages in order to estimate the value of diminished fringe benefits.
12. We have not seen evidence that would allow computation of actual medical expenses incurred by Taylor since his accident.
13. Terry Marshall-Gilfillan has also estimated specific medical care and other training that Taylor will require as he continues his education. The required items of care, their annual costs, and the present values of all future care requirements are projected in Table 6.

Computational Methodology

1. Present values of all losses in this report have been computed at 6.82%, the average return on U.S. Treasury bills, with 3-month maturities, over the 25 years 1975-1999.

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Taylor Armstrong, page 4

2. Annual losses of Taylor's future normal capacity to earn wages for the remainder of his normal worklife are assumed to grow at the average rate of wage growth for all U.S. workers over the same 25-year period.
3. All future care and training costs are assumed to grow at an annual rate equal to 7.63%, the average rate of change in the Medical Care Price Index over the 25 years 1975-1999. While some of these costs are educational in nature education costs, especially in recent years, have grown at least as rapidly as have medical costs.
4. To simplify projections of losses, all cash flows in this report are shown in constant dollars, but discounted to present value at an interest rate that is net of the expected growth rate of any particular loss. This methodology yields exactly the same results that would be obtained by inflating annual losses, then discounting those losses to present value at the expected T-bill return. The net discount rate used in all computations is calculated using the formula:

$$d = \frac{(1 + i)}{(1 + g)} - 1$$

where d = the net discount rate,

i = the 25-year average return on T-bills, and

g = the expected annual growth rate of loss being analyzed.

Computation of Losses

Based on foundational material and computational assumptions cited above, the values of Taylor's economic losses are summarized as follows:

Losses of earnings capacity are projected in Table 3. On this date the present value of those losses is not less than \$217,206, and is probably at least \$496,715.

Losses of the normal fringe benefits of employment have a value of not less than \$61,391, and probably at least \$128,012 on November 1, 2000. Those values are computed in Table 4.

We have included a computational worksheet in which incurred medical expenses may be summarized, and which may be used to compute statutory pre-judgment interest, though those costs are unknown at this time.

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The medical, care, and training costs estimated by Marshall-Gilfillan are projected in Table 6, and have a present value of \$43,731.

Summary of Losses

Based on each of the facts and/or computational assumptions explained above, it is our opinion that Taylor Armstrong and/or his parents have suffered a total economic loss, as a result of his injuries, that has a present value of not less than \$322,329, and is probably at least \$668,458.

You will undoubtedly have questions as you study this report. If so, please don't hesitate to call.

Sincerely,



Paul A. Randle

Table number: 1
 Table title: Interest Rates, Price Indices, and Wage Growth Indices
 Years: 1975-1999

Year	Interest Rates, 3-Month Treasury Bills ¹	Percentage Change in Consumer Price Index ²	Percentage Change in Medical Care Price Index ³	Percentage Change in U. S. Private Sector Wages ⁴
1975	5.84%	9.14%	12.03%	6.84%
1976	4.99%	5.77%	9.47%	7.28%
1977	5.27%	6.45%	9.62%	8.02%
1978	7.22%	7.66%	8.42%	8.38%
1979	10.05%	11.26%	9.22%	8.26%
1980	11.51%	13.52%	10.96%	8.12%
1981	14.03%	10.37%	10.68%	8.86%
1982	10.69%	6.13%	11.58%	5.93%
1983	8.63%	3.22%	8.76%	4.43%
1984	9.35%	4.26%	6.16%	3.74%
1985	7.47%	3.57%	6.27%	3.00%
1986	5.98%	1.92%	7.49%	2.22%
1987	5.82%	3.65%	6.64%	2.51%
1988	6.69%	4.08%	6.53%	3.34%
1989	8.12%	4.80%	7.72%	4.09%
1990	7.51%	5.41%	9.04%	3.62%
1991	5.42%	4.24%	8.72%	3.10%
1992	3.45%	3.01%	7.40%	2.42%
1993	3.02%	2.95%	5.94%	2.46%
1994	4.29%	2.61%	4.77%	2.68%
1995	5.51%	2.82%	4.50%	4.32%
1996	5.02%	2.94%	3.49%	1.81%
1997	5.07%	2.32%	2.80%	5.93%
1998	4.81%	1.56%	3.20%	3.84%
1999	4.64%	2.21%	3.51%	3.46%
25-Year Average Rates	6.82%	5.04%	7.40%	4.75%

¹ Federal Reserve Bank of the U.S., Interest Rate Data Web Page, January, 2000.

² U. S. Department of Labor, Web CPI Data Retrieval Page, January, 2000.

³ U. S. Department of Labor, Web CPI Data Retrieval Page, January, 2000.

⁴ U. S. Department of Labor, Web Establishment Hours and Earnings Data Retrieval Page, January, 2000.

Filename: Armstrong.xls, rates

Table number:	2
Table title:	Mean annual income by highest degree earned, 1997
Source:	U.S. Bureau of the Census, October, 1998

Average annual earnings, 1997 dollars:

Age	Not a HS Graduate	HS Graduate	Some College, no Degree	Associates	Bachelors	Masters	Professional
18	6,980	11,221	9,125	14,277	18,026	26,621	5,000
19	6,980	11,221	9,125	14,277	18,026	26,621	5,000
20	6,980	11,221	9,125	14,277	18,026	26,621	5,000
21	6,980	11,221	9,125	14,277	18,026	26,621	5,000
22	6,980	11,221	9,125	14,277	18,026	26,621	5,000
23	6,980	11,221	9,125	14,277	18,026	26,621	5,000
24	6,980	11,221	9,125	14,277	18,026	26,621	5,000
25	14,692	20,373	23,608	26,770	32,431	35,626	52,476
26	14,692	20,373	23,608	26,770	32,431	35,626	52,476
27	14,692	20,373	23,608	26,770	32,431	35,626	52,476
28	14,692	20,373	23,608	26,770	32,431	35,626	52,476
29	14,692	20,373	23,608	26,770	32,431	35,626	52,476
30	14,692	20,373	23,608	26,770	32,431	35,626	52,476
31	14,692	20,373	23,608	26,770	32,431	35,626	52,476
32	14,692	20,373	23,608	26,770	32,431	35,626	52,476
33	14,692	20,373	23,608	26,770	32,431	35,626	52,476
34	14,692	20,373	23,608	26,770	32,431	35,626	52,476
35	17,975	25,613	29,640	30,438	43,830	58,624	108,588
36	17,975	25,613	29,640	30,438	43,830	58,624	108,588
37	17,975	25,613	29,640	30,438	43,830	58,624	108,588
38	17,975	25,613	29,640	30,438	43,830	58,624	108,588
39	17,975	25,613	29,640	30,438	43,830	58,624	108,588
40	17,975	25,613	29,640	30,438	43,830	58,624	108,588
41	17,975	25,613	29,640	30,438	43,830	58,624	108,588
42	17,975	25,613	29,640	30,438	43,830	58,624	108,588
43	17,975	25,613	29,640	30,438	43,830	58,624	108,588
44	17,975	25,613	29,640	30,438	43,830	58,624	108,588
45	19,885	27,133	34,141	33,086	44,523	56,022	115,498
46	19,885	27,133	34,141	33,086	44,523	56,022	115,498
47	19,885	27,133	34,141	33,086	44,523	56,022	115,498
48	19,885	27,133	34,141	33,086	44,523	56,022	115,498
49	19,885	27,133	34,141	33,086	44,523	56,022	115,498
50	19,885	27,133	34,141	33,086	44,523	56,022	115,498
51	19,885	27,133	34,141	33,086	44,523	56,022	115,498
52	19,885	27,133	34,141	33,086	44,523	56,022	115,498
53	19,885	27,133	34,141	33,086	44,523	56,022	115,498
54	19,885	27,133	34,141	33,086	44,523	56,022	115,498
55	19,088	24,829	34,178	32,570	41,874	45,391	95,146
56	19,088	24,829	34,178	32,570	41,874	45,391	95,146
57	19,088	24,829	34,178	32,570	41,874	45,391	95,146
58	19,088	24,829	34,178	32,570	41,874	45,391	95,146
59	19,088	24,829	34,178	32,570	41,874	45,391	95,146
60	19,088	24,829	34,178	32,570	41,874	45,391	95,146
61	19,088	24,829	34,178	32,570	41,874	45,391	95,146
62	19,088	24,829	34,178	32,570	41,874	45,391	95,146
63	19,088	24,829	34,178	32,570	41,874	45,391	95,146
64	19,088	24,829	34,178	32,570	41,874	45,391	95,146

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Table number:	3
Table title:	Present value of future wage losses
Date of computation:	11/01/2000
First and last ages of normal income:	24.08 60.68
Expected normal wage & growth rate:	See Table 2 4.75%
Fraction of first & last year's normal income lost:	16.44% 43.29%
First and last ages, impaired income:	23.08 58.78
Expected impaired wage & growth rate:	See Table 2 4.75%
Fraction of first & last year's impaired income earned:	16.44% 53.15%
Years between date of analysis & date of first employment:	12.00
Discount rate and net discount rate:	6.8160% 1.9755%

	-1-	-2-	-3-	-4-	-5-	
	Age on January First Of Each Year ¹	Expected Uninflated Normal Income, Four-year Degree	Expected Uninflated Normal Income, Master's Degree	Expected Uninflated Impaired Income	Estimated Uninflated Annual Loss, Four-year Degree (1 - 3)	Estimated Uninflated Annual Loss, Master's Degree (2 - 3)
2012	23.08	\$0	\$0	\$4,289	(\$4,289)	(\$4,289)
2013	23.24	5,415	0	26,089	(20,675)	(26,089)
2014	24.24	59,264	71,429	48,919	10,345	22,510
2015	25.24	59,264	71,429	48,919	10,345	22,510
2016	26.24	59,264	71,429	48,919	10,345	22,510
2017	27.24	59,264	71,429	48,919	10,345	22,510
2018	28.24	59,264	71,429	48,919	10,345	22,510
2019	29.24	59,264	71,429	48,919	10,345	22,510
2020	30.24	59,264	71,429	48,919	10,345	22,510
2021	31.24	59,264	71,429	48,919	10,345	22,510
2022	32.24	59,264	71,429	48,919	10,345	22,510
2023	33.24	59,264	71,429	48,919	10,345	22,510
2024	34.24	80,094	117,540	55,622	24,472	61,918
2025	35.24	80,094	117,540	55,622	24,472	61,918
2026	36.24	80,094	117,540	55,622	24,472	61,918
2027	37.24	80,094	117,540	55,622	24,472	61,918
2028	38.24	80,094	117,540	55,622	24,472	61,918
2029	39.24	80,094	117,540	55,622	24,472	61,918
2030	40.24	80,094	117,540	55,622	24,472	61,918
2031	41.24	80,094	117,540	55,622	24,472	61,918
2032	42.24	80,094	117,540	55,622	24,472	61,918
2033	43.24	80,094	117,540	55,622	24,472	61,918
2034	44.24	81,360	112,323	60,460	20,900	51,862
2035	45.24	81,360	112,323	60,460	20,900	51,862
2036	46.24	81,360	112,323	60,460	20,900	51,862
2037	47.24	81,360	112,323	60,460	20,900	51,862
2038	48.24	81,360	112,323	60,460	20,900	51,862
2039	49.24	81,360	112,323	60,460	20,900	51,862
2040	50.24	81,360	112,323	60,460	20,900	51,862
2041	51.24	81,360	112,323	60,460	20,900	51,862
2042	52.24	81,360	112,323	60,460	20,900	51,862
2043	53.24	81,360	112,323	60,460	20,900	51,862
2044	54.24	76,519	91,008	59,518	17,002	31,490
2045	55.24	76,519	91,008	59,518	17,002	31,490
2046	56.24	76,519	91,008	59,518	17,002	31,490
2047	57.24	76,519	91,008	59,518	17,002	31,490
2048	58.24	76,519	91,008	31,634	44,885	59,374
2049	59.24	76,519	91,008	0	76,519	91,008
2050	60.24	33,123	62,795	0	33,123	62,795

Present value of future wage loss based on 4-year degree

\$217,206

Present value of future wage loss based on master's degree

\$496,715

¹ Except for the first year of the analysis, when the age shown is the age on the date of analysis.

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Table number:	4
Table title:	Present value of future benefit losses
Date of computation:	11/01/2000
First and last ages of normal benefits:	24.08 60.68
Fraction of first and last year's normal benefits lost:	16.44% 43.29%
First and last ages of impaired benefits:	23.08 58.78
Fraction of first and last year's impaired benefits earned:	16.44% 53.15%
Normal & impaired benefit to wage ratios:	23.83% 22.28%
Years between date of analysis & date of first employment:	12.00
Discount rate and net discount rate:	6.8160% 1.9755%

	-1-	-2-	-3-	-4-	-5-	
	Age on January First Of Each Year ¹	Expected Uninflated Normal Benefit, Four-year Degree	Expected Uninflated Normal Benefit, Master's Degree	Expected Uninflated Impaired Benefit	Estimated Uninflated Annual Loss, Four-year Degree (1 - 3)	Estimated Uninflated Annual Loss, Master's Degree (2 - 3)
2012	23.08	\$0	\$0	\$955	(\$955)	(\$955)
2013	23.24	1,291	0	5,813	(4,522)	(5,813)
2014	24.24	14,125	17,025	10,899	3,226	8,126
2015	25.24	14,125	17,025	10,899	3,226	6,126
2016	26.24	14,125	17,025	10,899	3,226	6,126
2017	27.24	14,125	17,025	10,899	3,226	6,126
2018	28.24	14,125	17,025	10,899	3,226	6,126
2019	29.24	14,125	17,025	10,899	3,226	6,126
2020	30.24	14,125	17,025	10,899	3,226	6,126
2021	31.24	14,125	17,025	10,899	3,226	6,126
2022	32.24	14,125	17,025	10,899	3,226	6,126
2023	33.24	14,125	17,025	10,899	3,226	6,126
2024	34.24	19,090	28,015	12,392	6,698	15,623
2025	35.24	19,090	28,015	12,392	6,698	15,623
2026	36.24	19,090	28,015	12,392	6,698	15,623
2027	37.24	19,090	28,015	12,392	6,698	15,623
2028	38.24	19,090	28,015	12,392	6,698	15,623
2029	39.24	19,090	28,015	12,392	6,698	15,623
2030	40.24	19,090	28,015	12,392	6,698	15,623
2031	41.24	19,090	28,015	12,392	6,698	15,623
2032	42.24	19,090	28,015	12,392	6,698	15,623
2033	43.24	19,090	28,015	12,392	6,698	15,623
2034	44.24	19,392	26,772	13,470	5,922	13,302
2035	45.24	19,392	26,772	13,470	5,922	13,302
2036	46.24	19,392	26,772	13,470	5,922	13,302
2037	47.24	19,392	26,772	13,470	5,922	13,302
2038	48.24	19,392	26,772	13,470	5,922	13,302
2039	49.24	19,392	26,772	13,470	5,922	13,302
2040	50.24	19,392	26,772	13,470	5,922	13,302
2041	51.24	19,392	26,772	13,470	5,922	13,302
2042	52.24	19,392	26,772	13,470	5,922	13,302
2043	53.24	19,392	26,772	13,470	5,922	13,302
2044	54.24	18,238	21,692	13,260	4,978	8,431
2045	55.24	18,238	21,692	13,260	4,978	8,431
2046	56.24	18,238	21,692	13,260	4,978	8,431
2047	57.24	18,238	21,692	13,260	4,978	8,431
2048	58.24	18,238	21,692	7,048	11,190	14,644
2049	59.24	18,238	21,692	0	18,238	21,692
2050	60.24	7,895	14,967	0	7,895	14,967

Present value of future benefit loss based on 4-year degree

\$61,391

Present value of future benefit loss based on master's degree

\$128,012

¹ Except for the first year of the analysis, when the age shown is the age on the date of analysis.

Filename: Armstrong.xls, fullben

Table number:	5
Table title:	Value of actual medical expenses incurred to date, And computation of pre-judgment interest
Date of incident:	01/07/1996
Date of analysis:	11/01/2000
Years, date of incident to date of analysis	4.82
Pre-judgment interest rate (not compounded):	10.00%

Date of Service	Provider	Amount	Accrued Interest at 10.00%
?	?	?	?

Table number:	6
Table title:	Projection of Expected Future Medical and Training Costs, and Computation of Present Value at Net Discount Rate
Age in first year of analysis:	11.08
Estimated date of death:	74.18
Beginning & ending dates of loss:	11/01/2000 12/08/2063
Fraction of initial year lost:	16.44%
Date of computation:	11/01/2000
Medical price inflation rate:	7.3977%
Discount rate and net discount rate:	6.8160% -0.5417%

Age	Year	Medical/ Diagnostic Services	Adjustment & Behavioral Counseling	Special Education Tutoring	Vocational Assessment	Vocational Or Trade School Tuition	Annual Uninflated Medical and Training Costs
11	2000	\$90	\$0	\$789	\$0	\$0	\$879
12	2001	550	1,238	4,800	0	0	6,588
13	2002	550	0	4,800	0	0	5,350
14	2003	550	1,238	4,800	0	0	6,588
15	2004	550	0	0	0	0	550
16	2005	550	1,238	0	0	0	1,788
17	2006	550	0	0	1,088	0	1,638
18	2007	0	1,238	0	0	9,000	10,238
19	2008	0	0	0	0	9,000	9,000
20	2009	0	0	0	0	0	0
21	2010	0	0	0	0	0	0

Present value of future medical and training expenses at net discount rate

\$43,731

Filename: Armstrong.xls, futrmeds

10/25/00

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RANDLE ASSOCIATES - 10012554846

NO. 445

013

Table number:	7
Table title:	Summary of Economic Losses
Date of analysis:	11/01/2000

Nature of Loss	Minimum Present Value	Probable Present Value
Present value of future wage losses	\$217,206	\$496,715
Present value of future fringe benefit losses	61,391	128,012
Value of actual medical expenses	?	?
Present value of future medical expenses	43,731	43,731
Present value of total loss	\$322,329	\$668,458

Filename: Armstrong.xls, summary

VITA

Paul A. Randle
Emeritus Professor of Finance
Utah State University

President, Paul A. Randle & Associates

Address and Telephone Numbers

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Logan, Utah 84321
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Degrees

- Bachelor of Science, Finance, 1965, University of Utah
 - Master of Business Administration, 1967, University of Utah
 - Doctor of Philosophy, 1970, University of Illinois at Champaign-Urbana
- Major Fields of Study
Corporation Finance, Investment Theory, Urban Land Economics
- Minor Fields of Study
Economic Theory, History and Philosophy of Economic Thought
- Dissertation Title
A Critical Analysis of Mutual Fund Performance

Teaching Positions

Utah State University, Logan, Utah
Assistant Professor of Finance, 1970-1973
Associate Professor of Finance, 1973-1977
Professor of Finance, 1978-1999
Emeritus Professor of Finance, 1999-Present

University of Utah, Salt Lake City, Utah
Instructor in Finance, 1969-1970

Visiting Professor of Finance, 1973
European MBA Program
Wiesbaden, Germany
University of Illinois, Urbana-Champaign, Illinois
Instructor in Finance, 1967, 1968

Northern Colorado University, Greeley, Colorado
Assistant Professor of Finance, 1967

Research Interests

Asset valuation; capital budgeting and project analysis; insurance and risk management; personal financial planning decision making; forensic economics.

Memberships, Honors

Financial Management Association
Omicron Delta Epsilon Honorary in Economics
Beta Gamma Sigma Honorary in Business Administration
College of Business Professor of the Year, 1981-82
Alpha Kappa Psi Professor of the Year, 1973-74
Listed in Who's Who in Business and Finance
Listed in Outstanding Educators of America

Publications

Books

1. Personal Financial Planning for Physicians and Dentists. Wadsworth Publishing Company, Belmont, CA, 1982.
2. Financial and Working Capital Management. Tupperware Corporation, Orlando, Florida, 1980. (A text written for Tupperware Corporation, under a consulting contract with that company. This book was the basis for an internal management-training program in accounting and finance.)
3. Personal Financial Planning for Executives. Wadsworth Publishing Company, Belmont, CA 1981.
4. Managing Your Money, an Investment Strategy for Professionals. Wadsworth Publishing

Company, Belmont, CA 1979.

5. Financial Planning for the Professional. Academic Associates, Logan, Utah. 1977.

Papers and Articles in Refereed Journals

1. "The Mortgage Refinancing Decision: A Present Value Break-even Approach," The CPA Journal, February, 1996.
2. "Evaluating New Life Insurance Products," The CPA Journal, September, 1995.
3. "Do Real Estate Investments Meet Your Rate of Return Expectations?," The Journal of Real Estate Finance, Winter, 1992.
4. "Selecting the Correct Retirement Plan for Your Business," Journal of Management in Engineering, April, 1985.
5. "Valuation Errors Inherent in Weighted Average Cost of Capital," Proceedings of the annual meeting of the Eastern Finance Association, April 1979. With Chris S. Coray.
6. "Elwood Revisited: A Mathematical Statement of Increasing Cost of Capital," Proceedings of the annual meeting of the Eastern Finance Association, April, 1978, with Philip R. Swensen.
7. "An Analytical Model for Evaluation of the Costs of Replacing Social Security Benefits with Private-Sector Insurance Programs," Proceedings of the annual meeting of the American Institute of Decision Sciences, April, 1978, With Chris S. Coray and Peter M. Ellis.
8. "Regional Planning and Development: A Net Present Value Approach," Proceedings of the annual meeting of the American Institute of Decision Sciences, March 1977, with Philip R. Swensen.
9. "Evaluation of Plan Investments and the Prudent Man Rule," Proceedings of the 1976 Pension Institute, Mountain States Pension Conference, October 1976.
10. "Subdivisions Out in the County Can Be Expensive: An Update," Utah Science, June 1976, with Philip R. Swensen.
11. "Subdivisions Out in the County Can Be Expensive," Utah Science, September 1975, with James L. Thompson and C. M. McKell.

Papers and Articles in Professional Journals

1. "Five Steps To Better Estate Planning," Physician's Management, February, 1988, p 123.
2. "Turn Your Debts Into Risk-Free Profits," Physician's Management, January, 1988, p 71.
3. "How to Evaluate Your Investments, Physician's Management," December, 1987, p 147.
4. "How Much Do You Know About The Stock Market?," Physician's Management, November, 1987, p 175.
5. "Malpractice Suits: Causes and Prevention," Physician's Management, October, 1987, p 184.
6. "Fundamentals of Investing In Corporate Bonds," Physician's Management, July, 1987. p 115.
7. "How Sound Is Your Investment Strategy," Dental Management, August, 1987, p 44
8. "How To Determine Your Insurance Needs, Dental Management," May, 1987, p 48
9. "Stock Options: High Profit, High Risk," Physician's Management, May 1987, p 171
10. "Best Ways To Plan For Your Retirement," Physician's Management, December, 1986. p 54.
11. "How To Determine Your Insurance Needs," Physician's Management, August, 1986 p 219.
12. "Creative Financing: Which Is Your Best Alternative," Physician's Management, May, 1986, pp 67-73.
13. "Five Steps To Simplify The Estate Planning Process," Dental Management, April, 1986, pp 40-49.
14. "How Sound Is Your Investment Strategy?," Physician's Management, March, 1986. pp 199-210.
15. "Can Your Tax Shelters Leak?," Physician's Management, February, 1986, pp 91-119

16. "Six Common Myths About Income Taxes," Physician's Management, January, 1986, pp 113-123.
17. "Financial Planning: Where Will You Be In 2003?," Physician's Management, January, 1986, pp 234-246.
18. "Can Your Retirement Plan Be Disqualified?," Physician's Management, December, 1985, pp 106-119.
19. "How To Avoid Leaky Tax Shelters, Dental Management," December, 1985, pp 42-47.
20. "Retirement Planning: Which Option Is Best For You," Dental Management, November, 1985, pp 36-48.
21. "How To Choose The Best Mutual Fund," Physician's Management, November, 1985, pp 81-88.
22. "How Good Is Your Investment Know How?," Physician's Management, May, 1985, pp 89-97.
23. "Eight Money Management Ideas You Can Use," Physician's Management, April, 1985, pp 86-93.
24. "Can Leasing Work For You?," Physician's Management, March, 1985, pp 200-217.
25. "What Makes an Investment Worthwhile?," Physician's Management, January, 1985, pp 62-69.
26. "How Much Do You Know About IRA's?," Physician's Management, January, 1985, pp 221-232.
27. "Fixed Costs and Net Income: Ways to Boost Profits," Dental Management, October, 1984, pp 16-22.
28. "Have You Achieved Financial Security?," Physician's Management, September, 1984, pp 83-89.
29. "Retirement: What Will You Have & What Will You Need," Physician's Management, July, 1984, pp 158-180.
30. "Planning Your Estate: Security First, Dental Management, July, 1984, pp 22-28.
31. "The Best Tax Shelters: Look For Income Too," Dental Management, June, 1984, pp 28-42.
32. "When Will You Be Able To Retire?," Physician's Management, June, 1984, pp 102-

110.

- 33 "Do Tax Shelters Make Good Investments?," Physician's Management, April, 1984, pp 271-289
- 34 "Take Charge Of Your Financial Planning, Physician's Management, March, 1984, pp 131-148
- 35 "The Pros and Cons of Auto and Equipment Leasing," Dental Laboratory Review, December, 1983
- 36 "Common Errors In Estate Planning," Physician's Management, November, 1983, pp 83-92
- 37 "Your Banker A Business Partner You Can Count On," Dental Management, July, 1983, pp 34-38
- 38 "How To Determine Your Life Insurance Needs," Physician's Management, July, 1983, pp 151-169
- 39 "Don't Let Your Pension Plan Go Up In Smoke," Physician's Management, June, 1983, pp 50-57
- 40 "Estate Planning Under Reaganomics," Dental Management, December, 1982, pp 16-24
- 41 "How To Pick an IRA," Dental Management, September, 1982, pp 31-37
- 42 "Choosing the Right Employee Retirement Plan," Dental Laboratory Review, June, 1982, pp 14-18
- 43 "Does Your Retirement Plan Measure Up?," Physician's Management, April, 1982, pp 41-47
- 44 "Your Estate Plan After The Tax Act of 1981," a 30 minute auto-tutorial presentation written and produced for the Library of the American Association of Orthodontists, 1981
- 45 "Inflation and Budgeting," a 30 minute television program produced by KUSU and aired on educational television in many parts of the U S
- 46 "The Most Often Overlooked Investment," Dental Economics, June 1978
- 47 "Your Estate Plan After the 1976 Tax Reform Act," a 30 minute auto-tutorial presentation written and produced for the library of the American Association of Orthodontists,

February 1978.

48. "Your Retirement Plan and the Magic of Time," Dental Economics, May 1977.
49. "Is Your Retirement Plan Accomplishing Its Objectives?," Utah State Medical Journal, January 1977.
50. "Life Insurance--Don't Get Stuck with the Wrong Kind," Dental Economics, October 1976.
51. "How Much Tax Shelter Can You Afford?," Utah State Medical Journal, September 1976.
52. "Why Not Reduce the Cost of Your Insurance Programs?," Utah State Medical Journal, October, 1976.
53. "The Perils of Professional Incorporation," Dental Economics, July 1976.
54. "Those Baffling Balance Sheets can Signal Success or Failure," Dental Economics, June 1976.
55. "Buying Equipment is Really Cheaper than Leasing," Physician's Management, April 1976.
56. "How Much Does Leasing Really Cost?" Dental Economics, June 1975.
57. "Risks in Investing;" "Investments;" "Borrowing Money;" and "Estate Planning." A series of four 30 minute television scripts written for KUSU Television, Logan, Utah, and aired on educational television stations throughout the United States. 1973.

Editorships

1. Contributing Editor, *Physician's Management*, 1980 to present.
2. Contributing Editor, *Dental Management*, 1980 to 1991.
3. Member, Board of Editors, *Financial Education*, 1972-1973.
4. Member, Board of Financial Advisors, Dental Economics, 1974-1977.

Computer Programs Published

1. "DEPO, A Microcomputer Program For Testimony Summary." Advanced Micro Applications Corporation, Logan, UT, 1986.
2. "MIRP--Mortgage Interest Reduction Planner." Advanced Micro Applications Corporation, Logan, UT, 1986.
3. "ARMP--Adjustable Rate Mortgage Planner." Advanced Micro Applications Corporation, Logan, UT, 1986.
4. "SSB--Social Security Benefit Estimator." Advanced Micro Applications Corporation, Logan, UT, 1986.
5. "RPA--Retirement Planning Analysis." Advanced Micro Applications Corporation, Logan, UT, 1986.
6. "CFD, A Microcomputer Program For Creative Financing Decisions." Advanced Micro Applications Corporation, Logan, UT, 1985.
7. "STS, A Microcomputer Program For Analysis of Structured Legal Settlements." Advanced Micro Applications Corporation, Logan, UT, 1984.
8. "PFP, A Microcomputer Program For Personal Financial Planning." Advanced Micro Applications Corporation, Logan, UT, 1983.
9. "EOL, A Microcomputer Program For Evaluation Of Economic Losses." Advanced Micro Applications Corporation, Logan, UT, 1986.

Papers Presented at Professional Meetings

1. "A Generalized Model for Valuation of Income Real Estate," presented to the 1982 annual meeting of the Eastern Finance Association, April, 1982, New York. With P. R. Swensen.
2. "Valuation Errors Inherent in Weighted Average Cost of Capital," presented to the 1979 annual meeting of the Eastern Finance Association, April, 1979, Washington, D C. With Chris S. Coray.
3. "Economic Evaluation of the Costs and Benefits of Subdivision Development," presented to a meeting of the Institute for Community Development, Salt Lake City, Utah, November 8, 1978.
4. "Net Present Value Techniques in Public Sector Decision Making: Planning for Economic Impact of Rapid Growth Due to Energy Development," presented to the annual meeting of the Air Pollution Control Association, Houston, Texas, June 25-29, 1978.

- 5 "Elwood Revisited A Mathematical Statement of Increasing Cost of Capital," presented to the annual meeting of the Eastern Finance Association, Atlanta, Georgia, April, 1978 With Chris S Coray and Philip R Swensen
- 6 "An Analytical Model for Evaluation of the Costs of Replacing Social Security Benefits with Private-Sector Insurance Programs," presented to the annual meeting of the American Institute of Decision Sciences, San Diego, California, April 1978, with Chris S Coray and Peter M Ellis
- 7 The Alexander S Pollock Memorial Management Lecture, presented to the 45th annual meeting of the American Animal Hospital Association, Salt Lake City, April 1978
- 8 "Valuation of Single Asset Portfolios," presented to the annual meeting of the Financial Management Association, Seattle, Washington, October 1977 With Philip R Swensen
- 9 "An Analysis of Tax Sheltered Limited Partnerships," presented to the annual meeting of the Financial Management Association, Montreal, October 1976 With Philip R Swensen
- 10 "Evaluation of Plan Investments and the Prudent Man Rule," presented to the annual Pension Institute, Mountain States Pension Conference, October 1976
- 11 "The Dangers of Funding Pension Plans with Whole Life Insurance," presented to the Spring meeting of the Mountain States Pension Conference, April 1976

Business and Consulting

President, Paul A Randle and Associates, Logan, Utah Since 1973 this firm has been retained in a broad variety of consulting engagements with private firms, governmental entities, and individuals. These engagements have dealt with many different types of financial and economic analyses, engineering and land-use studies, actuarial analysis and advice, and matters in litigation.

Much of this firm's work deals with forensic economics, and includes testimony in numerous trials and administrative hearings. Following is a partial list of law firms (or the legal departments of other corporations) for whom such work has been done:

Abbott, Abbott & Walker, Orem UT
Allred & Associates, Salt Lake City UT
Anderson & Smith, Salt Lake City UT
Atkin & Lilja, Salt Lake City UT
Barrick Gold Corporation, Toronto, ON
Berman, Gaufin & Tomsic, Salt Lake City UT
Bertch & Birch, Salt Lake City, UT

J. Thomas Bowen Attorney at Law, Salt Lake City UT
Bugden, Collins & Morton, Salt Lake City UT
Burbidge, Carnahan, Ostler & White, Salt Lake City, UT
Bussart, West, Rossetti, Piaia & Tyler, Rock Springs, WY
Callister, Duncan & Nebeker, Salt Lake City UT
Campbell, Maack & Sessions, Salt Lake City UT
Carr & Waddoups, Salt Lake City, UT
Christensen & Jensen, Salt Lake City UT
Clyde, Snow & Swensen, Salt Lake City UT
Coben & Associates, Scottsdale, AZ
Cohne, Rappaport & Segal, Salt Lake City, UT
Colorado Interstate Gas Company, Colorado Springs CO
Crosby, Heafy, Roach & May, Oakland CA
The Crow Law Firm, Sacramento CA
Dart, Adamson & Donovan, Salt Lake City UT
Dewsnup, King & Olsen, Salt Lake City, UT
Domino's Pizza, Inc., Lansing, MI
Dunn & Dunn, Salt Lake City, UT
Durbano Law Firm, Layton, UT
Duvall, Hansen, Witt & Morley, American Fork, UT
Encore International, Inc., Salt Lake City, UT
Greg S. Erickson, Attorney at Law, Bountiful UT
Fabian & Clendenin, Salt Lake City, UT
Fisher, Scribner & Stirland, Provo, UT
Flickinger & Sutterfield, Provo UT
Flying J, Inc., Brigham City UT
Giauque, Crockett, Bendinger & Peterson, Salt Lake City UT
David A. Goodwill & Associates, Salt Lake City UT
Green & Berry, Salt Lake City UT
Gridley, Ward, Havas, Hamilton & Shaw, Ogden UT
Habush, Habush, Davis & Rottier, SC, Milwaukee WI
Hanson, Epperson & Wallace, Salt Lake City UT
Hanson, Nelson, Chipman & Quigley, Salt Lake City UT
Harris & Carter, Provo UT
Denton M. Hatch, Spanish Fork, UT
Helgesen, Waterfall & Jones, Ogden UT
Higbee & Jensen, Cedar City UT
Hill, Harrison, Johnson & Schmutz, Provo UT
Hillyard, Anderson & Olsen, Logan UT
Hogan & Willig, PLLC, Amherst NY
Holme, Roberts & Owen, Salt Lake City UT
Roger Hoole & Associates, Salt Lake City UT
Howard, Lewis & Petersen, Provo UT

Ivie & Young, Provo UT
James R. Black & Associates, Salt Lake City UT
Jardine, Linebaugh & Dunn, Salt Lake City UT
Johnson & Hatch, Salt Lake City UT
Jones, Waldo, Holbrook & McDonough, Salt Lake City UT
Kesler & Rust, Salt Lake City UT
Kidman & Associates, Murray UT
King & Isaacson, Salt Lake City UT
Kipp & Christian, Salt Lake City UT
Kirton & McConkie, Salt Lake City UT
Lane, Powell, Speers & Lubersky, Seattle WA
Larson, Kirkham & Turner, Salt Lake City UT
Marsden, Orton, Cahoon & Gottfredson, Salt Lake City UT
Merrill & Merrill, Pocatello ID
Mortensen & Lunceford, Bountiful UT
Moyle & Draper, Salt Lake City UT
Nalder & Stratford, Ogden UT
Nelson, Snuffer, Dahle & Poulsen, Sandy UT
Nielsen & Senior, Salt Lake City UT
Nurenberg, Plevin, Heller & McCarthy, Cleveland OH
Olsen & Hoggan, PC, Logan UT
Parr, Waddoups, Brown, Gee & Loveless, Salt Lake City UT
Parsons, Behle & Latimer, Salt Lake City UT
Perkins, Schwobe & McLachlan, Salt Lake City, UT
Perry, Malmberg & Perry, Logan UT
Portland General Electric Corporation, Portland, OR
Preston & Chambers, Logan UT
Prince, Yeates & Geldzahler, Salt Lake City UT
Racine, Olson, Nye, Budge & Bailey, Pocatello ID
Randle, Deamer, Zarr & Lee, Salt Lake City UT
Ray, Quinney & Nebeker, Salt Lake City UT
Richards, Brandt, Miller & Nelson, Salt Lake City UT
Robinson, Seiler & Glazier, Provo UT
Roger T. Sharp, Attorney at Law, Salt Lake City UT
Silvester & Conroy, Salt Lake City UT
Smith & Ure, Santa Ana CA
Linda D. Smith, Attorney at Law, Salt Lake City UT
Stanley R. Smith & Associates, American Fork UT
Snell & Wilmer, Salt Lake City UT
Snow, Christensen & Martineau, Salt Lake City UT
Spence, Moriarity & Schuster, Jackson WY
Spence, Moriarity & Schuster, Provo UT
Spence, Moriarity & Schuster, Salt Lake City UT

Spratley & Associates, Salt Lake City UT
Steinburg, Carwile & Herzik, Houston TX
Alan R. Stewart, PC, Salt Lake City, UT
Stirba & Hathaway, Salt Lake City UT
Strong & Hanni, Salt Lake City UT
Switter, Axland & Hanson, Salt Lake City UT
Robert Sykes & Associates, Salt Lake City UT
Sykes & Vilos, Salt Lake City UT
Texaco, Inc., White Plains, NY
Robert C. Tronvig, Sacramento CA
U.S. Department of Justice, Salt Lake City UT
Union Pacific Railroad Company, Salt Lake City UT
Utah Attorney General's Office, Salt Lake City UT
Van Cott, Bagley, Cornwall & McCarthy, Salt Lake City UT
Van Cott, Bagley, Cornwall & McCarthy, Ogden UT
Waltman & Grisham, Bryan TX
Watkiss, Dunning & Watkiss, Salt Lake City, UT
Wilcox, Dewsnup & King, Salt Lake City UT
Wilde & Associates, Midvale UT
Williams & Trine, Boulder CO
Williams, Jordan & Broderson, Visalia CA
Winder & Haslam, Salt Lake City UT
Ronald C. Wolthuis, Attorney at Law, Salt Lake City UT
Woodbury & Kesler, Salt Lake City UT
Young & Kester, Springville UT

Taylor Armstrong - Rocky Mountain Verdicts & Settlements

Injury: Closed Head Brain Injury

Month	#	Specials	Total Award
Aug 00	2		\$812,225
Jul 99	24	\$15,483.00	\$221,500
Jul 99	25	\$31,406.00	\$523,500
Jan 99	6	\$25,000.00	\$91,000
Dec 98	31	\$18,445.00	\$43,445.00
		Average	\$338,334.00

ROCKY MOUNTAIN VERDICTS & SETTLEMENTS

Reporting Personal Injury Verdicts and Settlements in the State of Utah

Volume 13, Issue No. 8

August, 2000

0008 #1 -- WAGE DISPUTE - \$4,000 SETTLEMENT,
PLUS BENEFITS.

MICHAEL L. ROWZEE,

vs.

WESTERN CONSTRUCTION SPECIALTIES, INC., and
DANA MCMULLIN.

U. S. District Court
Central District of Utah
Judge Ted Stewart
Case No. 2:99 CV 682

PLAINTIFF'S ATTORNEY: Pro se.

DEFENDANT'S ATTORNEY: Michael W. Spence, Robert
O. Rice, RAY, QUINNEY & NEBEKER.

DEFENDANT'S INSURANCE: Unknown.

EXPERTS: None disclosed.

PLAINTIFF'S AGE: Unknown. WORK: Office Worker.

FACTS: Plaintiff worked for Defendant for approximately
one year, from July 1, 1998, to July 1, 1999. Plaintiff
claimed that he informed Defendant at the time he was
hired that he could not tolerate working in an abusive
environment. Despite this, Plaintiff claimed that
Defendant was abusive in yelling, swearing, slamming
doors, etc. Plaintiff finally quit after complaining to
Defendant who said the situation would not change.
Plaintiff claimed that he worked 30 hours of unpaid
overtime and was owed two weeks of unused vacation
which Defendant refused to pay.

SETTLEMENT: This case settled with Defendant agreeing
to pay Plaintiff \$4,000, plus insurance premiums through
December 31, 2000.

0008 #2 -- PREMISES LIABILITY - TODDLER FALLS
IN OIL CHANGE PIT - HEAD INJURY - \$812,225
STRUCTURED SETTLEMENT.

MICHAEL PERRY, on behalf of his minor son, AUSTIN
PERRY,

vs.

PETERSON MOTOR CO.,

vs.

COLLEEN PERRY.

Second District Court
Weber County
Judge W. Brent West
Case No. 980904687

PLAINTIFF'S ATTORNEY: James R. Hasenyager,
MARQUARDT, HASENYAGER & CUSTEN.

DEFENDANT'S ATTORNEY: Shawn McGarry, KIPP &
CHRISTIAN.

DEFENDANT'S INSURANCE: Unknown.

PLAINTIFF'S EXPERTS: David E. Nilsson, Ph.D.,
Neuropsychologist.

DEFENDANT'S EXPERTS: None disclosed.

PLAINTIFF'S AGE: 2. WORK: None.

FACTS: Austin Perry, a 2-year-old child, was with his
mother who was having her car serviced at Defendant's
facility. The child wandered away from the service desk
to a nearby oil change pit, where he fell seven feet to the
concrete floor, hitting a railing on the way down and
landing on his head. Defendant claimed that the child's
mother was negligent in tending the child.

INJURIES: The accident occurred six years ago. The
child, now 8 years old, allegedly sustained a traumatic
brain injury with behavioral changes, including aggression
and emotional volatility, as well as learning disabilities.

(Continued on Page 3)

(PERRY vs. PETERSON MOTOR CO., CONT'D.)

The defense alleged other causes of these disorders, including the fact that the mother had a difficult pregnancy.

SPECIAL DAMAGES: Unknown.

SETTLEMENT: This case settled on a structured basis, including a \$320,000 cash payment, \$1,575/month from 6/21/00 to 5/21/10 (age 18), \$2,281/month, increasing 2% annually, from 6/21/00 through 5/21/50 (age 68), \$15,000 annually for five years starting 5/21/00, with additional

lump sum payments of \$100,000 on 5/21/22 (age 30), \$54,242 on 5/21/32 (age 40), \$400,000 on 5/21/42 (age 50), and \$400,000 on 5/21/52 (age 60). The total present value of the settlement was calculated at \$812,225.

0008 #3 -- DOG BITE - SCARRING ON CHILD'S FACE - \$21,800 SETTLEMENT.

LORI LAY, as guardian ad litem for BRAYDEN WILLIE,
vs.

ROBIN ARCHIBALD.

Second District Court
Weber County
Judge Pamela G. Heffernan
Case No. 990900668

PLAINTIFF'S ATTORNEY: Randall W. Richards,
Maurice Richards, RICHARDS, CAINE & ALLEN.

DEFENDANT'S ATTORNEY: Clifford J. Payne,
NELSON, CHIPMAN, QUIGLEY & HANSEN.

DEFENDANT'S INSURANCE: Unknown

EXPERTS: None disclosed.

PLAINTIFF'S AGE: 4. WORK: None.

FACTS: Plaintiff was bitten in and around the face by Defendant's Grand Pyrenees dog on July 24, 1998

INJURIES: Plaintiff was bitten on the front part of the left ear, the left eyebrow and forehead area, and on the left hand. Plaintiff has facial scarring and will require future plastic surgery.

SPECIAL DAMAGES: Plaintiff has had past medical bills of \$1,800, and future anticipated bills of \$2,100

SETTLEMENT: This case settled for \$21,800.

0008 #4 -- LANE CHANGE/TURNING ACCIDENT -
NECK AND BACK INJURIES - \$19,837.84 NEW
MONEY ARBITRATION AWARD.

CHRISTOPHER MARENGO,

vs.

QUESTAR CORPORATION, CHRISTOPHER I
MONTGOMERY and KASEY HENDERSON.

Second District Court
Weber County
Judge Roger S. Dutson
Case No. 990902975

PLAINTIFF'S ATTORNEY: Deirdre A. Gorman, FARR.

Rocky Mountain Verdicts & Settlements is a publication reporting verdict and settlement information of personal injury, malpractice, products liability, and similar cases. Rocky Mountain Verdicts has been published monthly since May, 1988, by David A. Wilde.

Information reported in this publication is obtained from court files, attorney interviews, and attorney submissions. All information reported as "facts" should be understood as representing allegations as obtained from attorneys and/or court filings. It is of course understood that different parties in litigation may have different opinions as to what the true "facts" really are.

We acknowledge that information may be incorrectly reported on occasion, despite our best efforts at accuracy. We are happy to print corrections or updates when notified by attorneys or other interested parties.

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For information on subscriptions or case searches, call (801) 268-2321. Ask for Dave Wilde. Or write to:

Rocky Mountain Verdicts and Settlements
P. O. Box 571261
Salt Lake City, Utah 84157-1261

(Jenkins vs. LDS Hospital, Cont'd.)

U S District Court
District of Utah
Judge David S Sam
Case No 2 98 CV 254 S

Plaintiff's Attorney: Linda Smith, Michael J
Milodragovich (MT)

Defendant's Attorney: Brinton R Burbidge, JoAnn E
Carnahan for LDS Hospital, P Keith Nelson for
Townsend and Quinlan

Experts: None disclosed.

Facts: Plaintiff, a Montana resident, underwent a procedure
at LDS Hospital on August 26, 1994. She claimed that
the Defendant's left a clamp in her abdomen. She sued for
negligent infliction of emotional distress.

Judgment: The defense moved for dismissal, claiming that
Plaintiff had missed the statute of limitations. The parties
disputed whether Utah (one year statute on retained
instruments) or Montana law (three year statute) should
control on this issue. The court concluded that Utah's one
year statute was controlling. The court noted that the
operation occurred in Utah, the patient-doctor relationship
was centered in Utah, and ruled "Utah law has the most
significant relationship." Plaintiff tried to circumvent the
malpractice statute of limitation by arguing that the
negligent infliction of emotional distress claim should be
considered outside the malpractice act. The court cited a
total of nine cases involving either negligent infliction of
emotional distress versus doctors, or retained instruments,
each of which concluded that the malpractice act is
controlling.

9901 #5 -- 20-month-old Child Falls Down Stairs -
Fractured Tibia - Defense Verdict.

Fred Levi Dreis, a minor,

vs.

Mark Scharmann.

Second District Court
Weber County
Judge Roger S Dutson
Case No 970906818

Plaintiff's Attorney: Chad B McKay

Defendant's Attorney: William A Stegall

Plaintiff's Experts: Donald Bryan, M D , Michael
McDonald, Housing Inspector

Defendant's Experts: None disclosed

Facts: Levi Dreis, a 20-month-old child, fell down stairs at

an apartment where he lived with his mother. He was
apparently planning to go down the stairs to visit a
relative who lived below. Plaintiffs claimed that the door
of the apartment swung out over the stairs in violation of
building code requirements, and that the child fell when he
pushed open the door. Defendants claimed that the child
had lived at the apartment with his mother for one year
before the accident, that he had been walking for six
months and had been up and down the stairs before the
accident. The defense noted that the door was installed by
a contractor as part of a general renovation of the premises
completed just before Plaintiffs took possession.

Injuries: Plaintiff suffered a transverse fracture of the
proximal right tibia. The leg was placed in a cast for five
weeks and healed without complications.

Special Damages: Plaintiff had medical bills of \$873.47.

Verdict: This case was tried to a jury on December 16-17,
1998. The jury deliberated 32 minutes. They found the
Defendant not negligent, and that there was no proximate
cause.

Offers: Plaintiff demanded medical bills, plus \$11,000.
Defendant offered medical bills, plus \$1,000.

9901 #6 -- Rollover Accident in Construction Area -
Spleen Removed, Head Injuries - \$91,000 Settlement.

Robert G. Christensen,

vs.

**Jason Bailey, Granite Construction dba Gibbons & Reed
Company, and the State of Utah.**

Second District Court
Weber County
Judge Pamela G Heffernan
Case No 960900553

Plaintiff's Attorney: Daniel L Wilson, Jeffery J Noland
Defendant's Attorney: Clinton D Jensen for Bailey, Scott
W Christensen for Granite Construction and the State of
Utah

Experts: None

Facts: Plaintiff was an 18-year-old student at the Clearfield
Job Corps. He and some friends were returning about
midnight from a concert at the Delta Center on May 2,
1996. Plaintiff was a back seat passenger in a Jeep driven
by Jason Bailey. While traveling northbound on I 15 near
Kaysville they encountered construction causing the
freeway to narrow from three lanes to one lane in a
relatively short span. Bailey, who acknowledged he was
driving at least 65 mph (other witnesses put the speed as
high as 85 mph), apparently did not notice the narrowing
in time and ran into a concrete barrier, causing the Jeep to

(Christensen vs. Bailey, et al., Cont'd.)

roll Plaintiff alleged that two other drivers, who were acquainted with Bailey and had also been to the concert, had distracted Bailey and contributed to the accident. It was also alleged by a number of witnesses that there was not proper warning of the upcoming construction and narrowing of lanes.

Injuries: Plaintiff was not wearing a seatbelt and was ejected from the rolling Jeep. He was knocked unconscious and suffered a closed-head injury which was difficult of proof as to its duration and effect. Plaintiff elected to forego any extensive testing or treatment for the head injury. Plaintiff also suffered internal injuries resulting in the removal of his spleen and an ugly scar on his abdomen. He suffered fractured teeth. He also suffered a back injury which continued to give him problems.

Special Damages: Plaintiff had medical bills of approximately \$25,000. He missed about six weeks of work although he earned very little at the time of the accident.

Settlement: Plaintiff settled with Bailey for policy limits of \$25,000. He settled with the two other drivers for \$10,000 each. He pursued a UIM claim against his insurer, Farmers, through arbitration with Robert Henderson, who awarded \$46,000. These settlements and award totaled \$91,000. As to the State and Granite Construction, they became aware of the accident soon after it happened and had an investigator at the scene that night who video-taped the road leading up to the accident. This video showed, contrary to witness claims, that there was ample warning of the upcoming construction and lane narrowing. Plaintiff agreed to settle with these entities for a nominal confidential amount after viewing these tapes. The tape was used by Plaintiff's counsel during the arbitration to disprove assertions of fault against the State/construction company.

9901 #7 -- **Head-on Collision - Possible Alcohol Involvement - Head Injury, Hemiated Disc - Policy Limits Settlement.**

Nghia N. Nguyen,

vs.

Kimber McCloy.

Second District Court
Weber County
Judge Michael D. Lyon
Case No. 980903383

Plaintiff's Attorney: Russell T. Doncouse

Defendant's Attorney: Joseph J. Joyce

Experts: None disclosed

Facts: Plaintiff was involved in a head-on collision with Defendant on May 8, 1996. The accident occurred on 24th Street in Ogden. The parties were traveling in opposite directions. Plaintiff claimed that Defendant was weaving wildly and crossed the center line. It was unclear whether Defendant was drunk or had fallen asleep.

Injuries: Plaintiff suffered post-concussion syndrome and a cervical disc herniation.

Special Damages: Plaintiff had medical bills in excess of \$7,000 and missed 15 days of work.

Settlement: This case settled for policy limits of \$25,000.

9901 #8 -- **FELA Claim - Neck/Back/Arm Injury - \$115,000 Settlement.**

Mark L. Hassell,

vs.

Southern Pacific Transportation Company.

Second District Court
Weber County
Judge Stanton M. Taylor
Case No. 960900092

Plaintiff's Attorney: Richard I. Ashton, John J. Rossi (CA)

Defendant's Attorney: E. Scott Savage, Casey K. McGarvey

Experts: None disclosed

Facts: Plaintiff, a male in his late 30's, was employed by Southern Pacific as a carpenter during July, 1995 working near Lovelock, Nevada. His job required heavy lifting of pre-mix concrete bags. He alleged that he hurt himself while lifting, and claimed that his employer should have provided forklifts or helpers to assist in lifting.

Injuries: Plaintiff suffered soft tissue injury to his neck, back and left arm. He alleged that he suffered aggravation to a pre-existing condition.

Special Damages: No information provided.

Settlement: This case settled for \$115,000.

9901 #9 -- **High Speed Rear-end Collision - Young Boy Suffers Head Injury - \$81,000 Settlement.**

Jeff D. Poorman and Marlene Poorman, individually and on behalf of their minor child, T. J. Poorman,

vs.

Kristin L. Richards.

Benson vs. Parkway Ford, et al., Cont'd.)**Plaintiff's Attorney:** J Jordan Christianson**Defendant's Attorney:** Joy Clegg for Parkway, David Mortensen for Yardley**Plaintiff's Experts:** Ronald Probert, Accident Reconstruction**Defendant's Experts:** Newell Knight, Accident Reconstruction**Facts:** Plaintiff, a two-year-old child, was struck by a car driven by Defendant Yardley, driving a vehicle owned by Parkway Ford. Yardley claimed the child darted out in front of her. Plaintiffs claimed that Yardley should have seen the child and avoided the accident. Yardley was driving 25 mph in a 40 mph zone.**Injuries:** Plaintiff suffered a non-depressed skull fracture and minor facial scarring. The skull fracture healed with no permanent damage. Possible future scar revision surgery was being considered.**Special Damages:** Plaintiff had medical bills of approximately \$5,000.**Verdict:** Parkway Ford settled early on for \$5,000. The case against Marci Yardley was tried to a jury which returned a verdict in favor of the defense.**Offers:** Yardley offered \$1,500.**Plaintiff's Attorney:** Lynn M Luker**Defendant's Attorney:** Patricia M Olsson, C Clayton Gill**Plaintiff's Experts:** Timothy Doerr, M.D. Orthopedic Surgeon**Defendant's Experts:** None disclosed**Facts:** Plaintiff was an ironworker in his late-30's. He was employed with Boise Steel Erectors, working on Micron's property on January 10, 1998. He was walking backward, directing a crane, when he stepped into an uncovered hole which housed a sprinkler valve. He alleged that the hole was obscured by several inches of snow.**Injuries:** Plaintiff wrenched his back as he fell, causing a herniated disc which required surgery.**Special Damages:** Plaintiff had medical bills of \$18,000. He was unable to do heavy lifting after his surgery, and changed jobs to operate a lawn care business. He alleged past lost wages of \$30,000, with total lost income over his lifetime of \$200,000.**Settlement:** This case settled with the third-party liability carrier paying \$90,000. In addition, the worker's compensation carrier, which was the same insurer, paid \$45,000 for Plaintiff's permanent disability and agreed to waive all subrogation claims.**Issues:** The parties disputed the constitutionality of legislation which would have taken away Plaintiff's right to pursue a third party claim. The case settled before this issue was resolved.**CASES FROM NEIGHBORING STATES**

A sampling of cases reported in recent issues of
Idaho Verdicts & Settlements and Wyoming
Verdicts & Settlements.

For subscription information to either of these
publications, call (801) 268-2321.

ID9907 #23 -- **Work-related Injury - Third Party Liability**
- Fall in Obscured Hole - Back Injury with Surgery -
\$90,000 Settlement.

Jim S. Cumutte,

vs.

Trautman Lawn & Landscape, Micron Semiconductor, et al.

Fourth District Court
Ada County
Judge Daniel T. Eismann
Case No. CV PI 98-365

WY9907 #24 -- **Rear-end Accident - Mild Brain Injury,**
Hearing Loss - \$225,000 Verdict.

Mark Hunter,

vs.

Chad Larson.

U. S. District Court
District of Wyoming
Judge William Downes
Case No. 98-CV-102

Plaintiff's Attorney: William R. Fix**Defendant's Attorney:** John Goodell (ID), Eric Hunn (ID)**Plaintiff's Experts:** Curt Stock, M.D., Hearing Loss (Bountiful, UT), Linda Gummow, Ph.D., Brain Injury (SLC, UT), William Skelton, Accident Reconstruction (Coeur D'Alene, ID), Jerome Sherman, Economist (Omaha, NE). Plaintiff also used the video deposition of James Worley, PT (SLC, UT), who did a functional evaluation test at the request of the defense.**Defendant's Experts:** Gerald Moress, M.D., Neurologist (SLC, UT), Elaine Clark, Ph.D., Brain Injury (SLC, UT), Terry Brown, M.D., Physiatrist (SLC, UT).

(Hunter vs. Larson, Cont'd.)

Facts: Plaintiff was a 37-year-old man. He worked as a self-employed carpenter. Plaintiff was riding as a passenger in a truck in the Snake River canyon. The truck had stopped in traffic for construction. Defendant rear-ended the truck at a speed estimated between 30-45 mph. Defendant admitted liability.

Injuries: Plaintiff suffered a mild brain injury. He alleged hearing loss and memory difficulties. Both of these claims were disputed by the defense. Plaintiff also suffered soft tissue injuries to his neck and back.

Special Damages: Plaintiff had medical bills of \$15,483. He claimed impairment to his earning capacity in the amount of \$300,000.

Verdict: This case was tried to a jury during the week of June 14-18, 1999. The jury returned a verdict in Plaintiff's favor in the amount of \$225,000. The defense filed motions for a new trial or remittitur, after which the case settled for \$221,500, all of which was paid by the insurer, North Pacific Insurance.

Offers: Plaintiff had offered to settle for policy limits of \$100,000 prior to trial. Defendant had offered \$35,000 during mediation, then increased the offer to \$100,000 during trial. Plaintiff rejected the offer at that time.

Plaintiff's Attorney: Bryan Ulmer.

Defendant's Attorney: Douglas Rennie (OH), Curtis Buckhammer.

Plaintiff's Experts: Erin Bigler, Ph.D., Head Injury (Salt Lake City, UT); Dennis Andrews, Accident Reconstruction (Tooele, UT); Stuart King, M.D., Physiatrist; Bill Hewitt, Trucking Safety (Phoenix, AZ).

Defendant's Experts: Paul Lees-Haley, Ph.D.; Head Injury (CA).

Facts: Plaintiff, a 46-year-old submersible electric pump installer, was traveling westbound on I-80 near Elk Mountain in very snowy "whiteout" conditions. He was rear-ended by Defendant's employee, driving a semi-truck. The impact was said to occur at a fairly low speed.

Injuries: Plaintiff suffered a mild head injury. He also suffered soft tissue neck injuries. He alleged that he suffered injury to his low back eventually leading to back surgery. Defendant claimed the Plaintiff had a pre-existing back condition, and argued that back surgery would have been necessary regardless of the accident.

Special Damages: Plaintiff had medical bills of \$31,406, which was split about evenly between treatments for the head injury and back surgery. He claimed lost income of \$122,243.

Settlement: This case settled for \$523,500.

WY9907 #25 -- Semi-truck Rear-ends Pickup - Back Surgery, Mild Head Injury - \$523,500 Settlement.

Dale Warren,

vs.

Ervin Findley, Inc.

U. S. District Court
District of Wyoming
Case No. 2:98 CV 180

I N D E X

TYPE OF CASE

CAR ACCIDENT	5, 10	REAR-END ACCIDENT	5, 8, 10, 12, 13	ARM - BURNS, SCARRING	1
CAR/PEDESTRIAN ACCIDENT	11	RETALIATORY TERMINATION	3	BACK - SURGERY	11
CAR/SEMI-TRUCK ACCIDENT	8	SEMI-TRUCK/PICKUP		BACK PAIN	7, 9, 11, 13
DAMAGE TO FARM CROPS	4	ACCIDENT	13	BRAIN INJURY	5, 6, 11
DOG BITE	6	SEXUAL HARASSMENT	3	BURNS - ARM	11
FALL FROM CLIFF	4	TRIP AND FALL	9	CEREBRAL PALSY -	
INTERSECTION ACCIDENT	6, 7	TURNING ACCIDENT	10	AGGRAVATED	6
MALICIOUS PROSECUTION	1	WORK-RELATED INJURY	12	CERVICAL - AVULSION	
MEDICAL MALPRACTICE	7	WRONGFUL DEATH - ADULT		FRACTURE	6
PREMISES LIABILITY	4, 6, 11	MALE	7	COGNITIVE IMPAIRMENT	1
PRODUCTS LIABILITY	11	WRONGFUL DEATH - YOUNG		CONCUSSION	6
RACIAL DISCRIMINATION	1	MALE	4	DEATH - ADULT MALE	1
		<u>INJURIES</u>		DEATH - YOUNG MALE	6
				DISC - HERNIATED, SURGERY	12

(Himouda vs. Olsen, Cont'd.)

the speed of impact at 3-5 mph

Injuries: Plaintiff suffered soft tissue injury to his neck, mid-back, and low back. He also complained of headaches and thoracic outlet symptoms. Plaintiff had two prior accidents with similar symptoms, although he testified that he had fully recovered from his prior injuries. His experts testified that the prior injuries made him more susceptible to injury of this type.

Special Damages: Plaintiff had medical bills of \$9,950, approximately one-half of which was for chiropractic care, the remainder for diagnostic testing.

Verdict: This case was tried to a jury which found the Defendant not negligent, and further found that the accident was not a proximate cause of Plaintiff's injuries.

9801 #4 -- Defendant Runs Stop Sign - Closed Head Injury, Chronic Pain, Depression.

Donna M. Johnson,

vs.

Vance F. Kahley.

Third District Court
Salt Lake County
Judge Tyrone E. Medley
Case No. 950904597

Plaintiff's Attorney: Jim Hanks

Defendant's Attorney: John M. Chipman

Plaintiff's Experts: Jeffrey States, D.C., Chiropractor

Defendant's Experts: Gerald R. Moress, M.D., Neurologist

Facts: Plaintiff was a passenger in Defendant's car. They were sightseeing near Tooele, Utah, when Defendant allegedly ran a stop sign, causing an accident.

Injuries: Plaintiff complained of chronic pain disorder, chronic depression, anxiety, a concussion and closed head injury, headaches, and cervical spondylosis. Plaintiff was involved in a second accident about two-and-a-half years later, with similar physical complaints.

Special Damages: Plaintiff had medical bills of \$13,000 combined for both accidents.

Verdict: This case was tried to a jury. The jury found in Plaintiff's favor and awarded damages of \$20,000.

Offers: Plaintiff demanded policy limits of \$50,000. Defendant offered \$15,000.

Issues: The jury was informed that the claim resulting from Plaintiff's second accident had settled, and was further informed of the amount of that settlement.

9801 #5 -- Defendant Turns Left in Front of Plaintiff - Herniated and Bulging Cervical Discs.

Chad Moulton,

vs.

Mandy L. Giles and Jay L. Giles.

Third District Court
Salt Lake County
Judge Anne M. Sturba
Case No. 950903846

Plaintiff's Attorney: Mark R. McDougal

Defendant's Attorney: John M. Chipman

Plaintiff's Experts: Dennis D. Thoen, M.D., Neurologist, Terry Martin, D.C., Chiropractor

Defendant's Experts: Gerald R. Moress, M.D., Neurologist

Facts: 16 year old Mandy Giles was driving her father's car with his permission. She turned left in front of a car in which Plaintiff was riding as a passenger.

Injuries: Plaintiff suffered herniated discs at C4/5 and C6/7 which indented the spinal cord. He also suffered bulging discs at C3/4 and C5/6. He did not have surgery. He continued to experience daily headaches four years after the accident. All three experts who testified agreed that Plaintiff was permanently impaired. Dr. Martin testified that in his opinion Plaintiff had a 15% whole person impairment, and was 24% disabled. Plaintiff did continue waterskiing and snowmobiling with pain.

Special Damages: Plaintiff had medical bills of approximately \$5,000. He also missed one week of work valued at \$480.

Verdict: This case was tried to a jury which found in Plaintiff's favor and awarded the following amounts:

Past Meds/Wages	\$ 5,480
Future Meds	\$ 4,500
Generals Damages	\$ 7,500
Total	\$17,480

The court reduced the verdict by PIP benefits of \$4,109.75.

Offers: Defendant had offered to settle before trial for \$7,500. Plaintiff demanded policy limits of \$25,000.

9812 #31 -- **Intersection Accident - Back Injury, Closed-head Injury.**

Carl S. Cottam,

vs.

Robert D. Goodwin and Daniel M. Goodwin, a minor.

Fourth District Court
Utah County
Judge Donald J. Eyre
Case No. 980403578

Plaintiff's Attorney: Allen K. Young

Defendant's Attorney: Victoria K. Kidman

Plaintiff's Experts: Valton Noble King, D.O.

Defendant's Experts: Patrick Luers, M.D., Radiologist

Facts: Plaintiff was a 67 year old man. He was traveling westbound on 1850 North approaching State Street in Provo on the afternoon of December 12, 1996. Plaintiff proceeded into the intersection with a green light, where he collided with the northbound Defendant, Daniel Goodwin, who Plaintiff claimed had run a red light. Court documents indicate that the Defendant admitted to the investigating police officer that he had turned his head and did not see the light change. Another witness also supported Plaintiff's version of the facts.

Injuries: Plaintiff suffered a mild closed-head injury, a lumbosacral strain, aggravation of prior depression, and aggravation to a prior cervical fusion surgery.

Special Damages: See verdict information.

Verdict: This case was tried to a jury from October 27-29, 1998. The jury ruled that Plaintiff was not negligent and that Defendant was negligent. The jury awarded the following damages:

Past Medicals	\$3,445.00
Past Wages	\$7,000.00
Future Wages	\$8,000.00
<u>General Damages</u>	<u>\$25,000.00</u>

Total	\$43,445.00
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The court added costs of \$736.

9812 #32 -- **Rear-end Accident - Neck and Back Pain.**

Jewel Houston,

vs.

Maeggen Anderson.

Fourth District Court
Utah County
Judge Howard H. Maetani
Case No. 960400837

Plaintiff's Attorney: Kathleen Phinney

Defendant's Attorney: Stephen J. Trayner, Peter H. Christensen

Plaintiff's Experts: Brent M. Pratley, M.D., Orthopedic Surgeon

Defendant's Experts: Scott Knorpp, M.D., Physiatrist

Facts: Plaintiff was a 70 year old woman. She was southbound on University Avenue at approximately 2100 North in Provo. She slowed for traffic when she was rear-ended by Defendant. Defendant admitted to the investigating officer that she had looked down "for a minute" just before impact and did not see traffic stopped ahead.

Injuries: Plaintiff experienced pain in her right shoulder and elbow, cervical and thoracic pain, dizziness and headaches.

Special Damages: Plaintiff had medical bills of \$5,000.

Award: This case was arbitrated before former Judge James Sawaya. Judge Sawaya awarded Plaintiff new money of \$9,000.

9812 #33 -- **Car Accident - Wrongful Death of Husband/Father.**

Susan L. Cowley, personally and as Personal Representative of the Estate of David F. Cowley, for the benefit of his heirs, Susan, David T., Johnathon Q., Nadalie N. and Dustin L. Cowley,

vs.

Kamas Food Corporation, Inc., Kal Hoyt and Kevin Hoyt.

Fourth District Court
Wasatch County
Judge Donald J. Eyre
Case No. 970400068

Plaintiff's Attorney: Thomas W. Seiler, Bradley H. Parker

Defendant's Attorney: J. Angus Edwards

Plaintiff's Experts: Dr. Larry Platt, Grief Counselor (LL)

Tab C

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**IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY, STATE OF UTAH**

DANIEL J. ARMSTRONG, JARED
ARMSTRONG, TAYLOR ARMSTRONG
BY LORENE ARMSTRONG, his guardian
ad litem,

Plaintiffs,

vs.

GLEN C. PICKETT and JOHN DOES 1-5,

Defendants.

**DEFENDANT'S BRIEF REGARDING
PLAINTIFFS' DAMAGES**

Civil No. 980908711

Judge Homer Wilkinson

Defendant, Glen C. Pickett, by and through counsel, submits the following Brief regarding the appropriate measure of damages for Plaintiffs' claimed injuries in the above-entitled action. A hearing on Plaintiffs' damages was conducted before the Court on October 10, 2000 (the "Hearing"), at which time the Court heard testimony from the following individuals: Julia Jorgensen; Dennis J. Crouch; Daniel Armstrong; and Lorene Armstrong. In addition to the direct testimony from the individuals identified above, a binder of Exhibits A through R, Bate Stamped pages 0001 through 0607, was admitted without objection as to the form or foundation of the information contained therein with objections regarding admissibility and relevance being reserved. At the close of the Hearing, the Court requested written Memoranda specifically

addressing damages. [See pp. 108 through 109 of Transcript of October 16, 2000 Damage Hearing attached hereto as Exhibit A (“Transcript”)]. Therefore, pursuant to the Court’s direction, Defendant now highlights the following information for the Court’s consideration of an appropriate measure of damages for each separate Plaintiff in this case.

DANIEL ARMSTRONG

Daniel Armstrong claims the motor vehicle accident at the heart of this litigation exacerbated a prior low back injury. At the Hearing Mr. Armstrong described the impact on him as having “received a kidney punch” [Transcript at p. 30, lines 19-22]. In response to the question “What injuries or damages have you had that you attribute to this accident?” he answered, “From the kidney punch, nothing lasting. It was apparently gone within a couple of days when I visited my doctor. The lower back injury, the same within a day or so that I was waking up earlier. I had previously had an injury to the lower back and it would wake me up about 3:30 - 4:00. Now it was waking me up at 2:00.” [Transcript at p. 30, lines 12-22]. Mr. Armstrong's sole complaint at the Hearing was that he had to exercise more after the accident than he did before the accident.

The true indication of the non-existence of Mr. Armstrong’s back injury from the accident, however, is contained in his medical records following the accident which are void of any reference to pain, problems or complaints that are different from before this accident. His Emergency Room records from the day of the accident do not contain any treatment for or complaints of low back pain immediately following the accident. [See Dan Armstrong’s Emergency Room records from Pioneer Valley Hospital, pp. 35-37 of Exhibit D on file with this Court]. Furthermore, the day after the accident Mr. Armstrong saw his family physician, Dr. Scott Smith, and was treated for:

(a) tenderness over low rib cage and over right flank;

- (b) blood in his urine;
- (c) tenderness over the left neck muscles; and
- (d) pain in his strap, trapezius and rhomboid muscles.

He did not, however, receive any treatment for, or voice any complaints about, low back pain at that time. [Dan Armstrong's medical records from Scott Smith, p. 93 of Exhibit D, (entry for January 8, 1996) on file with this Court]. A little less than three weeks later, Daniel Armstrong returned to Dr. Scott Smith, complaining of mild headaches, shoulder and neck aches but did not even mention any low back pain. [*Id* (entry for January 27, 1996)]. From January 27, 1996, through May 11, 2000, Mr. Armstrong saw Dr. Smith on ten occasions for many concerns and problems. Dr. Smith's records, however, make absolutely no mention whatsoever that Mr. Armstrong ever sought treatment for, or voiced complaints of, low back pain attributed to the accident at the heart of this litigation. [*See* pp. 92-97 of Exhibit D on file with this Court].

It is undisputed that Daniel Armstrong had previously suffered a severe low back injury five or six years before this accident. The existence of that injury is evidenced in Bate Stamped page 97 of Dr. Smith's records, where it indicates Mr. Armstrong's back pain from an old injury was exacerbated by a horseback ride. At that time he was diagnosed with possible disc disease. Additional evidence of the severity of Mr. Armstrong's pre-existing low back injury is contained in Exhibit P (Daniel Armstrong's medical records from Cottonwood Hospital and Medical Center) where he personally advised the medical professionals that he had been involved in a car accident in 1990 "with a L5/S1 disc crushed." [p. 522 of Exhibit P on file with this Court]. Additionally, the Patient History Questionnaire which he personally filled out on that visit in January 1993, three years before the accident upon which his current claims are based, indicates Mr. Armstrong had

experienced blood in his urine since he was child and had problems sleeping caused by back pain after laying for just three to four hours. [p. 545 of Exhibit P on file with this Court].

Mr. Armstrong did not complain of low back pain or problems when he saw Dr. Smith on September 9, 1996 for arthritis in his finger; on February 24, 1997 when he reinjured his elbow; or for his scout physical conducted on July 7, 1997, 18-months after the accident. The first and only recorded indication that Mr. Armstrong experienced any back pain after the accident at issue in this case occurred in November of 1997, over 22-months after the accident, when he went to LDS Hospital for an MRI Scan of his lumbar spine. [p. 103 of Exhibit D on file with this Court]. At that time he described "back pain down the right leg, moderate for one year." *Id.* Even pursuant to his own account given at that time, he was free from new pains for at least 10-months following the accident.

Before this accident Daniel Armstrong had seen chiropractors, back specialists and other orthopedic surgeons who all treated his pre-existing back injury. He did not, however, produce any evidence, other than his unsupported testimony, which connects his current complaints of back problems to the January 7, 1996 accident at the heart of this dispute. Because Mr. Armstrong failed to produce any credible evidence of a new or different problem arising from or related to this accident he should not recover any amount in this case for: (1) his current low back pain; (2) the MRI Scan that was performed in November 1997; (3) the chair he claimed to need, for which there is no medical documentation regarding the reasonableness or necessity of what was purchased, other than the inadmissible hearsay writing from a non-treating chiropractor; (4) lost work; or (5) his Spa membership. Mr. Armstrong is only entitled to recover his actual, out-of-pocket expenses of

\$560.70, all of which have already been paid by Glen Pickett's insurer. Mr. Armstrong, therefore, should not recover any amount for general damages pursuant to Utah Code Ann. § 31A-22-309.

PROPERTY DAMAGE CLAIM

Daniel Armstrong does not have standing to pursue a claim for property in which he does not have an ownership interest. Lorene Armstrong was the registered and titled owner of the vehicle damaged in this accident. She, and only she, could bring a claim for property damage to that vehicle. [Transcript at p. 48, lines 17-24, attached hereto as Exhibit A, and the Accident Report, p. 01 of Exhibit A on file with this Court].

Nevertheless, even if Mr. Armstrong is entitled to pursue his wife's claim for property damage, he already received full and complete reimbursement from the insurance companies involved in this accident for that property damage. Allowing Mr. Armstrong to recover any additional funds would result in a double recovery for the property damage sustained. Mr. Armstrong also claims he is entitled to recover for items not included in the insurance companies' estimates of the value of the damaged vehicle such as stereo equipment, speakers, and a television set. He, however, retrieved all of those items from his vehicle and testified that they didn't look too good, but could be reutilized. [Transcript at p. 49, lines 19-22, attached hereto as Exhibit A]. He should not, therefore, recover any amount for those claimed damages. Mr. Armstrong failed to show that the accident in this case destroyed the extra equipment for which he now seeks reimbursement. Furthermore, because there is no logical explanation why he could not re-use the property, or evidence produced regarding its current condition, Mr. Armstrong should not be allowed to recover any amount on his property damage claim.

It should be noted that Mr. Armstrong also asserts a right to recover for a spa membership. That claimed expense, however, would have been incurred regardless of this accident. He testified that he worked out before and after the accident and the only difference was the frequency of his work-outs. Furthermore, he submitted no evidence of medical necessity or reasonableness for that claimed expense. He cannot, therefore, recover any amount for the costs and expenses related to a spa membership which he would have incurred whether this accident had happened or not. To allow him to do so would result in a windfall for him at Mr. Pickett's expense.

JARED ARMSTRONG'S CLAIMS

Jared Armstrong was involved in this accident and he was scarred. His scarring, however, is minimal, difficult to perceive along his jaw line with no ongoing problems resulting from that scarring. The scarring is depicted prior to scar revision surgery on Bate Stamped page 148 of Exhibit F on file with this Court and should only entitle him to compensation of general damages between \$2,000 and \$4,000. The only evidence upon which Jared's general damages could be based is his mother's testimony that sometimes he would come home from a date and the girl would notice the scarring and other times he would come home from a date and it would not be noticed. [Transcript at p. 73, lines 16-22, attached hereto as Exhibit A]. There is no evidence to support a large award of damages for the minor scarring sustained by Jared. Since the medical expenses incurred by Jared were all paid for by the insurance companies involved in this action, they should not be awarded as damages in this case.

TAYLOR ARMSTRONG'S CLAIMS

Taylor was injured. He had some minor cuts on his face and he suffered a concussion while incurring medical bills of \$4,489.83. The bill submitted by Dr. Bigler as a medical expense.

however, is more appropriately considered a cost of litigation as an expert witness fee, and should not be included in Taylor's award for damages.

Taylor suffered a concussion with some short-term effects. Dr. Bigler's opinions about continuing problems and on-going difficulties, however, are highly suspect and do not accurately portray Taylor's actual damages. Taylor's parents, Daniel and Lorene Armstrong, repeatedly received information regarding closed-head injuries. They received advice about such injuries on the night of the accident. They received additional information regarding such injuries during a telephone call to Dr. Scott Smith's office on February 1, 1996 [p. 259 of Exhibit H, on file with this Court] and by other medical professionals who treated their other son who sustained a severe head injury in another automobile accident that occurred in March of 1998 [pp. 303, 309 and 311-13 of Exhibit K, on file with this Court]. In spite of all this instruction, insight and advice, the Armstrongs did not seek treatment for Taylor's claimed closed-head injury until September 22, 1999, three years and nine months after the accident. Even then, they only attended one evaluation session with Dr. Erin Bigler, and thereafter failed to follow his advice for routine follow-up care in 6 to 12 month intervals. [*See* p. 253, Exhibit H on file with this Court]. Furthermore, while Dr. Bigler makes generalized and blanket statements such as closed-head injuries are not good for children and can cause problems in the future, there is no evidence whatsoever that Taylor will suffer from any such problems. On page 32 of Dr. Bigler's deposition, [p. 453 of Exhibit M on file with this Court]. Dr. Bigler was asked:

Q: Do you know what Taylor's permanent problems are going to be at this point in time?

A: I don't know exactly what Taylor's problems will be. As a group, children who have these problems can end up with less education, end up with less job sophistication.

Q: Can you say whether Taylor will end up there? Do you have an opinion about that?

A: I can't tell you that.

On page 34 of Dr. Bigler's deposition, [p. 455 of Exhibit M on file with this Court], he was asked:

Q: So it's your understanding when you saw [Taylor] in 1999 he was worse off, mentally, than he was before the accident?

A: Well, no. You have to be careful how you say that, because even though he was behind, he was still at second-grade level, which is . . . He wasn't in the second grade when he had the head injury.

So, you know, it was not that he was worse, but he was behind where he should be, given his age.

On page 35 of Dr. Bigler's deposition [p. 456 of Exhibit M on file with this Court], he testifies:

Q: And there's no way to tell what that plateau will be for Taylor?

A: Well, there is.

Q: Right Now?

A: Not right at this point.


Since Dr. Bigler cannot testify about the magnitude or impact of Taylor's claimed injury, it would be pure speculation to award damages on what might or could happen to him in the future. What we do know, at this point, is that Taylor's scholastic records (Exhibit R, Bate Stamped pp 582-606) indicate that Taylor was behind in reading during the first grade. Since that time, however, he has made up any deficits, he has made good progress, and is currently average or above-average in every aspect of his elementary school education. In all likelihood, his progression will continue, and he will be able to compete with his classmates on a level playing field. Furthermore, Dr. Bigler testified that even if there is some permanent damage, that Taylor's age at the time of this injury would likely allow him to work around any deficits or problems. His past progress and the ability

to adapt, if needed, provide him with a bright future. [See Taylor's overall scholastic record at p. 584 of Exhibit R on file with this Court; his second, third, and fourth grade report cards at pp. 594, 595, and 596 of Exhibit R on file with this Court; his Student Assessment Profile for reading and verbal skills at pp. 598 (July 1997); 602 (July 10, 1998); p. 604 (June 30, 1999) of Exhibit R on file with this Court; and his SAT results of an October 1999 test at p. 606 of Exhibit R on file with this Court). Even Taylor's father testified at the Hearing that when you work with him he does fine in school. [Transcript at p. 50, lines 18-20, attached hereto as Exhibit A]. Additionally, his mother testified that the only problems she has noticed involved a short term problem with his ABC's, difficulty reading and a decrease in his activities. [Transcript at pp. 64 and 65, attached hereto as Exhibit A].

The testimony and evidence submitted to this Court cannot support a large award of general damages. Defendant believes that an appropriate measure of damages for Taylor would be between \$3,000 and \$5,000 over and above his medical expenses, all of which, have already been paid by the insurers involved in this case.

RESPECTFULLY SUBMITTED, this 27th day of November, 2000.

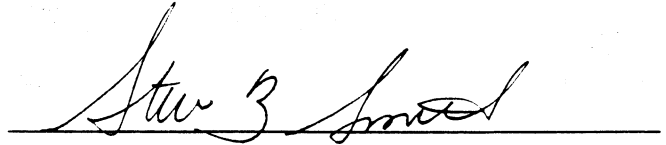
SCALLEY & READING, P.C.
Attorney for Defendant Glen A. Pickett


Steven B. Smith

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT'S BRIEF REGARDING PLAINTIFFS' DAMAGES** was sent to the following at the address listed below, by depositing the same in the United States mail, postage pre-paid on this 27th day of November, 2000:

Robert H. Wilde, Esq.
WILDE & ASSOCIATES
935 East South Union Avenue
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Midvale, Utah 84047

A handwritten signature in cursive script, appearing to read "Steve B. Smith", is written over a horizontal line.

Tab D

FILED
DISTRICT COURT

00 DEC 12 PM 4:52

WALLACE COUNTY
BY
DEPUTY CLERK

ROBERT H. WILDE #3466
ROBERT H. WILDE, ATTORNEY AT LAW, P.C.
Attorneys for Plaintiffs
935 East South Union Avenue Suite D-102
Midvale, Utah 84047
Telephone: (801) 255-4774

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----

DANIEL J. ARMSTRONG, JARED	)	REPLY BRIEF RE: DAMAGES
ARMSTRONG, TAYLOR ARMSTRONG BY)	
LORENE ARMSTRONG, HIS GUARDIAN)	
AD LITEM)	
)	
Plaintiff,)	
)	
vs.)	
	)	Civil No. 980908711
GLEN C. PICKETT AND JOHN DOES)	
1-5,)	
	)	Judge Homer F. Wilkinson
Defendant.)	

-----oo0oo-----

DAN ARMSTRONG PERSONAL INJURIES

Mr. Pickett acknowledges that he added to Dan's injuries. Mr. Pickett's answer was stricken and he was not allowed to put on any evidence rebutting Dan's injury claims. Where there is no evidence to allow the finder of fact to apportion the injury between the preexisting injury and the current injury it must all be allocated to the current tortfeasor. *Robinson v. All-star Delivery, Inc.* 1999 UT 109 (Utah 1999). Pickett is responsible for all of the aggravated injury.

DAN ARMSTRONG PROPERTY CLAIM

The stipulated exhibits show that the person who incurred the loss reflected in the upgraded equipment was Dan Armstrong. The vehicle is a family vehicle though Dan Armstrong was driving it at the time. Lorene Armstrong is a party to this action as the guardian ad litem for Taylor and originally for Jared. The sums paid by Armstrongs insurance carrier are the subject of a subrogation claim which may only be asserted through Armstrongs. They should be awarded judgment for all their losses, including those amounts they will have to pay back to the insurance company on the subrogation claim.

JARED ARMSTRONG PERSONAL INJURY

Jared's claims were adequately argued in his opening brief.

TAYLOR ARMSTRONG PERSONAL INJURY

Taylor performs adequately in school. In her trial testimony Lorene Armstrong, Taylor's mother, testified that Taylor has six siblings and that they have all done "very well" in school, trial transcript at page 67, line 6. She also testified that Taylor has to work a lot harder and doesn't do as well, transcript at 66. This tracks with Dr. Bigler's testimony. He said that injuries like Taylor's often manifest themselves when the child starts to not perform as expected in school, Bigler deposition at page 24, line 12.

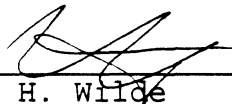
Clearly school performance is relative to what the child would otherwise have been expected to do. In Taylor's case we would have expected him to be an outstanding student, like his siblings. He was until Mr. Pickett ran over him. He manages to get reasonable grades at this point only because the Armstrongs work far more this him than they have any of their other children, trial transcript at 66.

As Dr. Bigler testified, it is more probable than not that Taylor will continue to have problems throughout life. Bigler deposition at page 29, line 17. Note the language used by Dr. Bigler in comparison to Taylor's burden of proof. He also testified that there are three areas of problems typical to children with brain injuries. Bigler deposition at page 18, line 11. First, they experience an increase in neuropsychiatric problems like depression-anxiety disorders and stress disorders. Second, children with brain injuries are at increased risk for learning disabilities and learning problems. These disabilities have already been seen in Taylor. Third, children with brain injuries tend to be more impulsive, have problems with judgment and have problems sustaining attention and concentration. Dr Bigler testified that puberty is a critical time for children with brain injuries. Bigler deposition at page 20, line 19. Taylor is now eleven.

As Taylor and his family compensate for his injury by working around his deficits they will never get Taylor back to where his development was in relation to his peers and will never return his functioning to what it would have been had Taylor not been injured. While Dr. Bigler categorized Taylor's injury as a "mild traumatic brain injury" he noted that with brain injuries "you can have mild problems that have monumental difficulties with them." Bigler deposition at page 38, line 17.

Taylor's injuries are catastrophic and should be compensated that way.

Dated this 12 day of December 2000.



Robert H. Wilde
Attorney for Plaintiffs

FILED
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00 DEC 12 PM 4:52
SALT LAKE COUNTY
BY
DEPUTY CLERK

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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----
DANIEL J. ARMSTRONG, JARED)
ARMSTRONG, TAYLOR ARMSTRONG BY) NOTICE TO SUBMIT FOR
LORENE ARMSTRONG, HIS GUARDIAN) DECISION
AD LITEM)
Plaintiff,)
vs.)
GLEN C. PICKETT AND JOHN DOES) Civil No. 980908711
1-5,)
Defendant.) Judge Homer F. Wilkinson
-----oo0oo-----

The following motion(s) are now at issue and ready for decision of the Court.

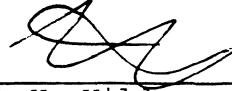
Type of Motion: Damages Briefing

Date Filed: 12/01/00

Party Filing Motion: Plaintiff

Pleadings Filed Pertaining to Motion: Plaintiff's Revised Damages Brief, 12/01/00; Defendant's Revised Brief Regarding Plaintiffs' Damages, 12/11/00; and Plaintiff's Reply Brief Regarding Damages, 12/12/00.

Dated this 12th day of December, 2000.

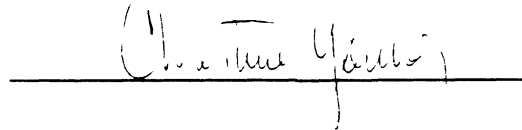


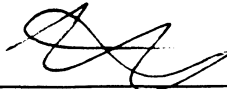
Robert H. Wilde
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was mailed to the following via first class mail, postage prepaid thereon, this 12 day of December, 2000.

Steve Smith
Scalley & Reading
261 East 300 South #200
Salt Lake City, Utah 84111



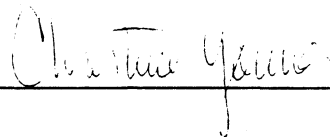


Robert H. Wilde
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was mailed to the following via first class mail, postage prepaid thereon, this 12 day of November, 2000.

Steve Smith
Scalley & Reading
261 East 300 South #200
Salt Lake City, Utah 84111



Tab E

Steven B. Smith, #5797
Darwin H. Bingham, #7810
SCALLEY & READING, P.C.
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Telephone: (801) 531-7870
Facsimile: (801) 531-7968

THIRD JUDICIAL DISTRICT COURT
COUNTY OF SALT LAKE
JAN 11 2007
JN

**IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY, STATE OF UTAH**

DANIEL J. ARMSTRONG, JARED
ARMSTRONG, TAYLOR ARMSTRONG
BY LORENE ARMSTRONG, his guardian
ad litem,

Plaintiffs,

vs.

GLEN C. PICKETT and JOHN DOES 1-5,

Defendants.

**OBJECTION TO AND MOTION TO
STRIKE INADMISSIBLE PORTIONS
OF PLAINTIFF'S DAMAGES BRIEF**

Civil No. 980908711

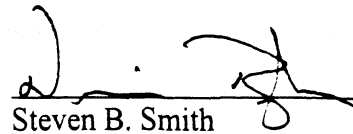
Judge Homer Wilkinson

Defendant, Glen C. Pickett, by and through counsel, hereby objects to and moves this Court to strike Exhibits 1 through 6 attached to Plaintiffs' Damages Brief and all references contained in the body of the brief which refer to the inadmissible Exhibits. Exhibits 1 through 6 and the information contained therein are irrelevant and not likely to make the existence of any fact at issue in this case more or less likely. Additionally, Exhibits 1 through 6 and the information contained therein are inadmissible as hearsay and double hearsay and are, therefore, inherently irrelevant and should be disregarded by this Court. In more complete factual and legal basis for this Objection and Motion is contained in the Memorandum in Support of Defendants

Objection to and Motion to Strike Inadmissible Portions of Plaintiffs' Damages Brief which is filed concurrently herewith.

RESPECTFULLY SUBMITTED, this 27 day of November, 2000.

SCALLEY & READING, P.C.
Attorney for Defendant Glen A. Pickett



Steven B. Smith
Darwin H. Bingham

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OBJECTION TO AND MOTION TO STRIKE INADMISSIBLE PORTIONS OF PLAINTIFFS' DAMAGES BRIEF** was sent to the following at the address listed below, by depositing the same in the United States mail, postage pre-paid on this 27 day of November, 2000:

Robert H. Wilde, Esq.
WILDE & ASSOCIATES
935 East South Union Avenue
Suite D102
Midvale, Utah 84047



Tab F

ROBERT H. WILDE #3466
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Telephone: (801) 255-4774

WN

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----
)
DANIEL J. ARMSTRONG, JARED) REVISED DAMAGES BRIEF
ARMSTRONG, TAYLOR ARMSTRONG BY)
LORENE ARMSTRONG, HIS GUARDIAN)
AD LITEM)
)
Plaintiff,)
)
vs.)
) Civil No. 980908711
GLEN C. PICKETT AND JOHN DOES)
1-5,)
) Judge Homer F. Wilkinson
Defendant.)
-----oo0oo-----

DAN ARMSTRONG

PERSONAL INJURIES

The evidence submitted to the court showed that the wreck of January 6, 1996 exacerbated Dan Armstrong's pre-existing lower back injury. Before the wreck Dan was able to keep the pain under control by using prescribed sit ups and crunches. After the wreck Dan requires half an hour in the gym, six days a week, to achieve the same result. If Dan doesn't use this regimen to control his pain he cannot sleep past 2:00 a.m. Even with these exercises the pain still effects his ability to work and enjoy life.

MEDICAL EXPENSES

Dan's medical expenses, from the exhibit book are at least the

following: Western Emergency Physicians, \$265.00; Pioneer Valley Hospital, \$295.75; LDS Hospital, \$1,071.22; A.Lee Bahr, M.D., \$180.00. Dan's expenses related to continuing treatment or therapy, as shown at trial are at least the following: cost of prescribed chair, \$1,073.00; to date total cost of monthly spa membership, \$2,750.00. **Dan's medical and related expenses total no less than \$5,634.97.**

GENERAL DAMAGES

Given the permanent nature of Dan's injuries and the fact that they will impede him in all his work, family and personal activities for the rest of his life an appropriate amount of **general damages for Dan's pain and suffering is \$15,000.00.**

PROPERTY DAMAGE

Dan was paid \$13,675.00 by Atlanta Casualty, defendant's insurance company. He was paid another \$13,482.49 by his underinsured carrier, USF&G. USF&G has a subrogation claim against defendant for this amount which can only be exercised through the Armstrongs.

Other damages were sustained by Dan as a result of the loss of the Suburban including the loss of add-ons to the vehicle which were not paid by either insurance company. These total \$5,147.78. **Dan should be awarded \$5,147.78 plus \$13,675.00 or a total of \$18,822.78 for property damage.**

JARED ARMSTRONG

In the wreck Jared Armstrong was severely cut. The scars which resulted from those cuts were revised by Dr. Bindrup. Dr. Bindrup testified that the scars, as they currently exist, will probably

remain through out Jared's life. Jared's testimony and photos show the scars are still there. Jared's mother testified he was embarrassed by the scars.

MEDICAL EXPENSES

Jared's medical expenses are at least the following: Gold Cross Ambulance, \$405.28; Western Emergency Physicians, \$265.00; Pioneer Valley Hospital, \$921.50; Consultant Radiologies, \$216.00; Dr. Jed Bindrup, \$75.00; Dr. Jed Bindrup, \$640.00; and John Robinson, \$256.00. **Jared's medical expenses are \$2,778.78.**

GENERAL DAMAGES

Given the permanent nature of Jared's scars and the fact that they will affect him in his dating and personal life for the rest of his life plaintiffs believe an appropriate amount of **general damages for Jared's pain and suffering is \$10,000.00.**

TAYLOR ARMSTRONG

Following the wreck Taylor Armstrong's parents noticed that his ability to do certain types of school work had changed. In the middle of his first grade year he no longer knew his "A, B, Cs" which he had learned in kindergarten and had mastered in the first half of first grade. When they sought help from Taylor's teachers they were told "read with him." They were already reading with him. They continued to read with him. They were so concerned they took him to Dr Scott Smith who ordered a brain scan which failed to uncover the problems When Taylor's problems persisted they went to see Dr. Erin Bigler, Utah's pre-eminent authority on traumatic closed head brain injury

Based on a battery of tests and a detailed history Dr. Bigler diagnosed a mild traumatic closed head brain injury which damaged the left hemisphere. That damage was quantified by Dr. Bigler as resulting in a 19 point verbal IQ loss. The injury effects Taylor's ability to read and perform complex tasks requiring left hemisphere functions. It means Taylor will not do well in college and will not be competitive for higher paying jobs. The injury also limits Taylor's ability to participate in athletic and other physical activities.

Dr. Bigler testified it is more probable than not that these problems will continue to exist throughout Taylor's life. He also testified that there are three areas of problems typical to children with brain injuries. First, they experience an increase in neuropsychiatric problems like depression-anxiety disorders and stress disorders. Second, children with brain injuries are at increased risk for learning disabilities and learning problems. These disabilities have already been seen in Taylor. Third, children with brain injuries tend to be more impulsive, have problems with judgment and have problems sustaining attention and concentration. Dr. Bigler testified that puberty is a critical time for children with brain injuries. Taylor turned eleven last month.

There are things Taylor and his family can do to compensate for his injury and work around his deficits. However these will never get Taylor back to where he was in relation to his peers and will never return his functioning to what it would have been had Taylor not been injured. While Dr. Bigler categorized Taylor's injury as a "mild traumatic brain injury" he noted that with brain injuries "you can

have mild problems that have monumental difficulties with them."

MEDICAL EXPENSES

Taylor's medical expenses are at least the following: Gold Cross Ambulance, \$405.28; Western Emergency Physicians, \$265.00; Pioneer Valley Hospital, \$1,174.35; Consultant Radiologies, \$41.00; Consultant Radiologies, \$274.00; American Fork Radiology, \$22.00; American Fork Hospital, \$86.20; HCA St. Marks, \$749.00; HCA St. Marks, \$998.00; Diagnostic Radiology, \$228.50; Diagnostic Radiology, \$171.50; and Dr. Jed Bindrup, \$75.00. Taylor's expenses related to therapy are at least the following: Dr. Erin Bigler, \$1,400.00; Hooked on Phonics, \$250.00; Karate Lessons, \$1,008.00. **Taylor's medical and related expenses total no less than \$7,147.83.**

FUTURE DAMAGES

From Dr. Bigler's testimony it is evident that Taylor will continue to require assistance to get through school. Once he gets through school he will only be competitive for much low paying jobs. Taylor will have costs he would not have otherwise had and will earn far less than he would have.

GENERAL DAMAGES

Taylor's damages discussed above are only his monetary damages. They do not reflect any compensation to Taylor for the diminution of his quality of life. They don't compensate him for being unable to play ball with his friends now or for being unable to play ball with his children when he becomes a father. They do not compensate for the aspects of the pure enjoyment of life he will not have because Mr. Pickett decided to drive drunk, again.

Given the broad and pervasive nature of the permanent injuries Taylor has suffered plaintiffs believe an appropriate amount of **general damages for Taylor's past and future pain and suffering is \$450,000.00.**


PUNITIVE DAMAGES

Mr. Pickett's attorney argued at trial that he had been convicted of an alcohol related offense and had learned his lesson. The court correctly noted that he had not learned his lesson enough to appear for his deposition or participate at trial. Some of the amounts the court will award the Armstrongs will be paid by insurance, either Mr. Pickett's basic auto policy or the Armstrongs' underinsured policy. The insurance companies will not pay punitive damages. Given the totality of the circumstances plaintiffs believe the court should award each of them **punitive damages against Mr. Pickett; Dan Armstrong - \$5,000.00, Jared Armstrong \$5,000.00 and Taylor Armstrong \$50,000.00.**

CONCLUSION

Plaintiffs believe the evidence provided the court supports the following damage awards.. (Dan Armstrong;) medical special damages of \$5,634.97; general damages for pain and suffering of \$15,000.00; property damage of \$18,822.78; punitive damages of \$5,000.00. Jared Armstrong; medical special damages of \$2,778.78; general damages of \$10,000.00; punitive damages of \$5,000.00. Taylor Armstrong; past medical special damages of \$7,147.83; general damages of \$450,000.00; punitive damages of \$50,000.00.

Dated this 1 day of December 2000.



Robert H. Wilde
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing
Damages Brief was telefaxed and hand delivered to the following, this
15 day of DECEMBER, 2000.

Steve Smith
Scalley & Reading
261 East 300 South #200
Salt Lake City, Utah 84111

Cristine Young

Tab G

Steven B. Smith, #5797
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rw

**IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY, STATE OF UTAH**

DANIEL J. ARMSTRONG, JARED
ARMSTRONG, TAYLOR ARMSTRONG BY
LORENE ARMSTRONG, his guardian ad litem,

Plaintiffs,

vs.

GLEN C. PICKETT and JOHN DOES 1-5,

Defendants.

**DEFENDANT'S REVISED BRIEF
REGARDING PLAINTIFFS' DAMAGES**

Civil No. 980908711

Judge Homer Wilkinson

Defendant, Glen C. Pickett, by and through counsel, submits the following Brief regarding the appropriate measure of damages for Plaintiffs' claimed injuries in the above-entitled action.

A hearing on Plaintiffs' damages was conducted before the Court on October 16, 2000 (the "Hearing"), at which time the Court heard testimony from the following individuals: Julia Jorgensen; Dennis J. Crouch; Daniel Armstrong; and Lorene Armstrong. In addition to the direct testimony from the individuals identified above, a binder of Exhibits A through R, Bate Stamped pages 0001 through 0607, was admitted without objection as to the form or foundation of the information contained therein with objections regarding admissibility and relevance being reserved. At the close of the Hearing, the Court requested written Memoranda specifically addressing damages. Therefore, pursuant to the Court's direction, Defendant submits the following for the Court's consideration of an appropriate measure of damages for each separate Plaintiff in this case.

Claimed Aggravation of Daniel Armstrong's Pre-Existing Back Injury:

Special Damages Daniel Armstrong claims this accident exacerbated a prior low back injury, and is, therefore, entitled to \$20,634.97 (\$5,634.97 in special damages and \$15,000 in general damages). Defendant does not dispute the necessity or reasonableness of Daniel Armstrong's bill from Western Emergency Physicians for \$265 incurred on 12/7/96 or his bill from Pioneer Valley Hospital for \$295.75 incurred on the same date. The remainder of his claimed special damages are not attributable to this accident. Dan Armstrong admitted he had previously suffered a severe low back injury which required him to exercise regularly at a local spa and caused him to lose sleep. He described his pre-existing injury as a crushed L5/S1 disc since 1990 and admitted to seeing at least one chiropractor and a back specialist (Dr. Soderberg) for that injury. [p. 522 of Exhibit P on file with this Court]. He did not, however, produce any testimony from those, or any other medical care provider connecting his claimed back problems to the January 7, 1996 accident. Dan Armstrong's records from Dr. Smith for ten (10) visits from January 27, 1996, through May 11, 2000, are entirely void of any mention that he ever sought treatment for, or voiced complaints of, low back pain from this accident. [*See* pp. 92-97 of Exhibit D on file with this Court]. The *only recorded* indication that Mr. Armstrong experienced any back pain after the accident is from November of 1997, over 22-months after the accident, when he went to LDS Hospital for an MRI Scan of his lumbar spine. His special damages for LDS Hospital (\$1,071.22 and Dr. A. Lee Bahr (\$180) are related to that visit, and because there is no medical connection between those claimed expenses and the accident those amounts should not be awarded to Dan Armstrong as special damages.

Likewise, his claimed special damages of \$1,073 for a chair and \$2,750 for a spa membership were not connected to this accident by any admissible evidence. The only evidence supporting his claimed need for a special chair was inadmissible hearsay from his chiropractor that did treat his pre-existing back injury but **NEVER** treated him for any complaint or problems alleged to have been caused by this accident. Mr.

Armstrong worked out before and after the accident and the only claimed difference was the frequency of his work-outs. Because there is no evidence of medical necessity or reasonableness for the chair or the spa, and because those claimed expenses would have been incurred whether this accident had happened or not, they should not be awarded to Mr. Armstrong as a windfall at Mr. Pickett's expense.

General Damages Because Mr. Armstrong's pain and suffering was minimal and short-lived, he should be awarded a minimal amount for general damages not to exceed \$500.

Daniel Armstrong's Property Damage Claim

Daniel Armstrong does not have standing to pursue a claim for property in which he does not have an ownership interest. Lorene Armstrong was the registered and titled owner of the vehicle damaged in this accident. She, and only she, could bring a claim for property damage to that vehicle. [Transcript at p. 48, lines 17-24, and the Accident Report, p. 01 of Exhibit A on file with this Court]. Nevertheless, even if Mr. Armstrong is entitled to pursue his wife's claim for property damage, he already received full and complete reimbursement from the insurance companies involved in this accident for that property damage. That claim has been fully and finally resolved between the insurers and allowing Mr. Armstrong to recover any additional funds would result in a double recovery for the property damage sustained. Finally, because Mr. Armstrong retained the salvage, including all the electronic equipment and received the full estimated value of the vehicle, he should not recover any amount for claimed "add ons." Furthermore, there is no evidentiary support for the claimed figure of \$5,147.78 for "add-ons" which were not paid for by the insurance companies in Exhibit J (pp. 274-96) of the Exhibit book on file with this Court. The only amount which is supported by evidence is \$254.70 for a Ming Mirror Finish on p. 288 of Exhibit J

Jared' Armstrong's Claim for Scarring

Special Damages Defendant does not dispute any of Jared's claimed special damages. Nevertheless, because they were already paid for by his own insurer, no amount should be awarded to

him personally for those expenses, or, any award should be reduced by the amount already paid for those expenses.

General Damages

Jared Armstrong was scarred. That scarring, however, is minimal, difficult to perceive along his jaw line and resulted in no ongoing problems. Jared underwent a scar revision procedure that was successful. Even the scarring that was present before the successful scar revision procedure is barely perceptible [p.148 of Exhibit F in the Exhibit Book on file with this Court] and merits a minimal award of general damages between \$1,500 and \$3,000.

Taylor Armstrong's Claim For An Alleged Closed Head Injury

Past Special Damages Taylor admittedly incurred medical bills of \$4,489.83 (\$405.28--Gold Cross Ambulance; \$265.00--Western Emergency Physicians; \$1,174.35--Pioneer Valley Hospital; \$41.00--Consultant Radiologist; \$22.00--American Fork Radiology; \$86.20--American Fork Hospital; \$749.00--HCA St. Marks Hospital; \$998.00--HCA St. Marks Radiology; \$171.50--Diagnostic Radiology; and \$75.00--Dr. Bindrup).

The claimed therapy expenses of \$1,400 for Dr. Bigler's bill, however, is a cost of litigation as an expert witness fee and not a necessary and reasonable medical expense. His parents repeatedly received information regarding closed-head injuries (on the night of the accident in the emergency room; during a telephone call to Dr. Scott Smith's office on February 1, 1996 [p. 259 of Exhibit H. of the Exhibit Book on file with this Court]; and from the medical professionals who treated another son that sustained a severe head injury in March of 1998 [pp. 303, 309 and 311-13 of Exhibit K, of the Exhibit Book on file with this Court]) yet did not seek treatment for Taylor's claimed closed-head injury until September 22, 1999, three years and nine months after the accident. Even then, they only attended one evaluation session with Dr. Erin Bigler, and thereafter failed to follow his advice for

routine follow-up care in 6 to 12 month intervals. [See p. 253, Exhibit H on file with this Court]. Dr. Bigler's bill should not, therefore be awarded as a medical expense or special damage amount.

Furthermore, there was no testimony that "Hooked on Phonics"(\$250.00) or Karate Lessons (\$1,008) were necessary, reasonable or required because of this accident. Those amounts therefore should not be awarded as special damages to Taylor Armstrong.

Future Special Damages and General Damages Plaintiff did not produce any admissible evidence to support an award of future special damages, or a large award for general damages. Any award for future special damages or a large award for general damages, therefore, would be speculative and improper. Plaintiff read portions of Dr. Bigler's deposition in which he made generalized statements such as closed-head injuries are not good for children and they can cause problems in the future. There was not, however, any evidence produced to support an award for future special damages or a large amount for general damages.

The more pertinent portions of the actual relevant testimony are set forth below:

On page 32 of Dr. Bigler's deposition, [p. 453 of Exhibit M on file with this Court], Dr. Bigler was asked:

- Q: Do you know what Taylor's permanent problems are going to be at this point in time?
- A: I don't know exactly what Taylor's problems will be. As a group, children who have these problems can end up with less education, end up with less job sophistication.
- Q: Can you say whether Taylor will end up there? Do you have an opinion about that?
- A: I can't tell you that.

On page 34 of Dr. Bigler's deposition, [p. 455 of Exhibit M on file with this Court], he was asked:

- Q: So it's your understanding when you saw [Taylor] in 1999 he was worse off, mentally, than he was before the accident?
- A: Well, no. You have to be careful how you say that, because even though he was behind, he was still at second-grade level, which is . . . He wasn't in the second

grade when he had the head injury. So, you know, it was not that he was worse, but he was behind where he should be, given his age.

On page 35 of Dr. Bigler's deposition [p. 456 of Exhibit M on file with this Court], he testified:

Q: And there's no way to tell what that plateau will be for Taylor?

A: Well, there is.

Q: Right Now?

A: Not right at this point.

Without evidence about the magnitude or impact of Taylor's claimed injury, it would be pure speculation to award any damages (special or general) on what might or could happen to him in the future. What we do know, at this point, is that Taylor's scholastic records (Exhibit R, Bate Stamped pp. 582-606) indicate that Taylor was behind in reading during the first grade. Since that time, however, he has made up those deficits. He has made good progress and is currently average or above-average in every aspect of his elementary school education. In all likelihood, his progression will continue, and he will be able to compete with his classmates on a level playing field. Finally, Dr Bigler testified that even if there is some permanent damage, Taylor's age at the time of his injury would likely allow him to work around any deficits or problems. His past progress and the ability to adapt, if needed, provide him with a bright future. [See Taylor's overall scholastic record at p. 584 of Exhibit R on file with this Court; his second, third, and fourth grade report cards at pp. 594, 595, and 596 of Exhibit R on file with this Court; his Student Assessment Profile for reading and verbal skills at pp. 598 (July 1997); 602 (July 10, 1998); p. 604 (June 30, 1999) of Exhibit R on file with this Court, and his SAT results of an October 1999 test at p. 606 of Exhibit R on file with this Court).

The testimony and evidence submitted to this Court cannot support an award of any amount for future special damages and should not lead this Court to award him a large sum for his general damages. An appropriate amount for Taylor's general damages would range between \$3,000 and

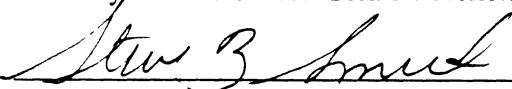
\$5,000 over and above his medical expenses, all of which, have already been paid by the insurers involved in this case.

PUNITIVE DAMAGES

While there is evidence that Mr. Pickett had been drinking before this accident, that offense was resolved through the courts. Mr. Pickett answered for that wrong. He appeared before that Court, admitted his error and promised that he would not re-offend. There is absolutely no evidence that Mr. Pickett has broken that promise or that he did not learn his lesson. To the contrary, his plea in court, his compliance with the court's sentence, the lack of any subsequent offenses for so much as a speeding ticket, his compliance with Utah's Owner's Financial Responsibility laws and his regular employment as a cement truck driver all indicate that he has learned his lesson. This accident where the injuries were not severe does not merit the award of punitive damages which must be proven by clear and convincing evidence. Nevertheless, if punitive damages are awarded they should be less than \$5,000, an amount that would severely impact Mr. Pickett's financial well being and send a message to similarly situated individuals not to drive after drinking.

RESPECTFULLY SUBMITTED, this 11TH day of December, 2000.

SCALLEY & READING, P.C.
Attorneys for Defendant Glen A. Pickett

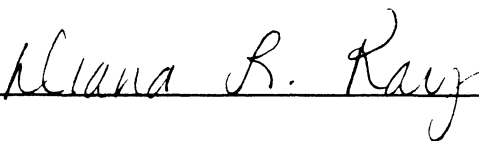


Steven B. Smith

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT'S REVISED BRIEF REGARDING PLAINTIFFS' DAMAGES** was sent to the following at the address listed below, by depositing the same in the United States mail, postage pre-paid on this 11 day of December, 2000:

Robert H. Wilde, Esq.
WILDE & ASSOCIATES
935 East South Union Avenue
Suite D102
Midvale, Utah 84047



Tab H

THIRD DISTRICT COURT-SALT LAKE COURT
SALT LAKE COUNTY, STATE OF UTAH

DANIEL J ARMSTRONG,	:	
Plaintiff,	:	COURT RULING
	:	
	:	
vs.	:	Case No: 980908711
	:	
GLEN C PICKETT,	:	Judge: HOMER F. WILKINSON
Defendant.	:	Date: 01/02/2001

Clerk: deborahw

The Court awards judgment ot the plaintiffs' and against the Defendant as follows:

DANIEL ARMSTRONG:	Western	
Emergency Physicians - \$265.00;	Pioneer Valley Hospital -	
\$295.75;	LDS Hospital - \$1,071.22;	Lee Baher -
\$180.00;	Orthopedic Chair - \$1,073.00;	Property damage (car
subrogation \$13,482.49)	\$27,357.49;	Property Damage - add
on car (1/2 \$5,147.78) - \$2,573.89;		General damages -
\$10,000.00;	Punitive Damages - \$5,000.00.	JARED ARMSTRONG:
Special Damages - medical expenses - \$2,778.78;		General
Damages - \$10,000.00;	Punitive Damages - \$5,000.00.	
TAYLOR ARMSTRONG:	Gold Cross - \$405.28;	Western Physicians
- \$265.00;	Pioneer Valley Hospital - \$1,174.35;	Consultant
Radiologies - (274.00 + 171.50)	\$400.00;	Jed Bindrup - \$75.00;
Hooked on Phonics - \$250.00;	General Damages - \$350,000.00;	
Punitive Damages - \$10,000.00.		Taxable costs awarded to

the Plaintiffs.

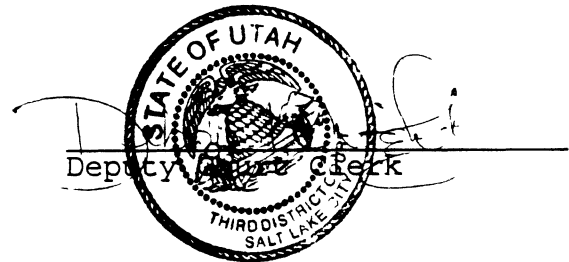
Case No: 980908711
Date: Jan 02, 2001

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 980908711 by the method and on the date specified.

METHOD	NAME
Mail	STEVEN B SMITH ATTORNEY DEF 261 EAST 300 SOUTH SUITE 200 SALT LAKE CITY, UT 84111
Mail	ROBERT H. WILDE ATTORNEY PLA 935 E SOUTH UNION AVENUE SUITE D-102 MIDVALE UT 84047

Dated this 3 day of January, 2001.



Tab I

FILED DISTRICT COURT
Third Judicial District

JAN 16 2001

SALT LAKE COUNTY

Deputy Clerk

ROBERT H. WILDE #3466
RUSSELL A. DENTON #8903
ROBERT H. WILDE, ATTORNEY AT LAW, P.C.
Attorneys for Petitioner
935 East South Union Avenue Suite D-102
Midvale, Utah 84047
Telephone: (801) 255-4774

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE CITY DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----
DANIEL J. ARMSTRONG, JARED)
ARMSTRONG, TAYLOR ARMSTRONG BY) FINDINGS OF FACTS &
LORENE ARMSTRONG, HIS GUARDIAN) CONCLUSIONS OF LAW
AD LITEM)
Plaintiff,)
vs.)
Civil No. 980908711
GLEN C. PICKETT AND JOHN DOES)
1-5,)
Judge Homer F. Wilkinson
Defendant.)
-----oo0oo-----

This matter came on regularly before the court on October 16, 2000 for trial. Plaintiffs Daniel Armstrong, Jared Armstrong and Taylor Armstrong as a result of Defendant Glen C. Pickett's conduct on January 7, 1996 Plaintiffs Daniel Armstrong and Lorene Armstrong ("Lorene"), as Taylor Armstrong's Guardian Ad Litem, were present and represented by Robert H. Wilde. Defendant Glen C. Pickett was not present but was represented by

Steve Smith. Based upon the defendants' failure to appear for his deposition and Plaintiffs' appropriate motion, the Court had previously struck Defendant's pleading. The parties presented evidence on the issue of damages sustained by the Plaintiffs. The evidence included testimony of witnesses and the offering of exhibits. The Court having observed the evidence, reviewed the memoranda filed, listened to the argument of counsel, and having found a preponderance of the evidence to support these findings of facts and conclusions of law and good cause appearing, therefore makes the following:

FINDINGS OF FACT

1. Daniel Armstrong ("Daniel") and Lorene Armstrong ("Lorene") are the parents of Jared Armstrong ("Jared") and Taylor Armstrong ("Taylor").

2. On January 7, 1996, Jared was 15 years of age and Taylor was six years of age.

3. On January 7, 1996, the Armstrongs were traveling west on 3100 South in West Valley City, Utah in a 1992 Chevrolet Suburban owned by Lorene.

4. After stopping at the intersection of 3100 South and 4800 West at 7:00 p.m., the Armstrongs began to proceed through the intersection.

5. Defendant Glen C. Pickett ("Pickett"), was traveling

north on 4800 West, failed to obey a stop sign and caused his 1976 Suburban to collide with the Armstrong vehicle in the middle of the intersection ("collision").

6. In the collision, Daniel sustained a blow to his lower back which aggravated a pre-existing back injury.

7. Daniel injuries required emergency medical treatment in the amount of \$295.75 from Pioneer Valley Hospital and in the amount of \$265.00 from Western Emergency Physicians.

8. The aggravation of Daniel's pre-existing back injury required additional medical treatment from LDS Hospital in the amount of \$1,071.22 and from A.Lee Bahr, M.D. (\$180.00).

9. The aggravation of Daniel's pre-existing back injury, also required the purchase of an orthopedic chair in the amount of \$1,073.00 in order to alleviate some of the pain and discomfort Daniel experiences while working.

10. Daniel sustained a total of \$2,884.97 in special damages relating to medical treatment of injuries resulting from the collision.

11. The Armstrongs' 1992 Chevrolet Suburban was a total loss as a result of the collision and as a result Daniel sustained \$27,357.49 in property damages of which \$13,482.49 is subject to subrogation.

12. Daniel also sustained \$2,573.89 in property damages to

after-market equipment installed in the 1992 Chevrolet Suburban at the time of the collision.

13. Upon impact, Jared began losing consciousness.

14. Jared's face and neck were cut and imbedded with glass.

15. Immediately after the collision and prior to emergency medical personnel arriving, Daniel tried to stop Jared's bleeding by applying pressure.

16. As a result of Jared's injuries, Daniel believed that his son was dying.

17. Jared's injuries required \$405.28 in emergency medical treatment and transportation by Gold Cross Ambulance to Pioneer Valley Hospital for further medical treatment.

18. Jared's injuries required emergency medical treatment in the amounts of \$921.50 from Pioneer Valley Hospital, \$265.00 from Western Emergency Physicians, and \$216.00 from Consultant Radiologies.

19. Scarring resulted to Jared's face from the glass cuts.

20. Dr. Jed Bindrup, a plastic surgeon, performed a surgical procedure to revise Jared's scars.

21. The recision of Jared's scars incurred medical expenses to Dr. Jed Bindrup in the amount of \$291.00 and Dr. John Robinson in the amount of \$256.00.

22. Jared sustained a total of \$2,778.78. in special

damages relating to medical treatment of injuries resulting from the collision.

23. Dr. Jed Bindrup was unable to remove Jared's scars completely through revision.

24. Further revision would not improve the appearance of Jared's scars and that they are permanent.

25. Jared experiences social embarrassment as a result of the scars.

26. The collision caused Taylor's head to strike a window.

27. As a result of his head hitting the window, Taylor suffered cuts and a loss of consciousness.

28. Taylor's injuries required \$405.28 in emergency medical treatment and transportation by Gold Cross Ambulance to Pioneer Valley Hospital for further medical treatment.

29. Taylor's injuries required further emergency medical treatment in the amounts of \$1,174.35 from Pioneer Valley Hospital, \$265.00 from Western Emergency Physicians, and \$400.00 from Consultant Radiologies.

30. Taylor's injuries also resulted in scarring.

31. Dr. Jed Bindrup evaluated Taylor's scars and determined revision was not advisable at this time.

32. Dr. Jed Bindrup's evaluation of Taylor's scar caused \$75.00 in medical expenses to be incurred.

33. Prior to the collision, Taylor was an above average student.

34. Shortly after the collision, the Armstrongs realized that Taylor was having problems reading and remembering his ABCs.

35. The Armstrongs began spending large amounts of time reading and working with Taylor to overcome his reading and memory problems.

36. To aid Taylor, the Armstrongs bought teaching aids which included Hooked on Phonics.

37. Taylor was diagnosed as having a "mild traumatic closed head brain injury which had damaged the left hemisphere".

38. Dr. Erin Bigler, opined that Taylor's injury resulted in a 19 point verbal IQ loss and effects his ability to read and perform complex tasks requiring left hemisphere functions.

39. Taylor's injuries limit his participation in athletic/physical activities.

40. Taylor's injuries will, in all probability, limit his success in college and obtaining one of the higher paying jobs in our economy.

41. Children having similar injuries experience: (1) an increase in neuropsychiatric disorders (i.e. depression-anxiety disorders, stress, etc.); (2) learning disabilities and learning problems the remainder of their lives; and (3) impulsiveness,

poor judgment, inattentiveness and lack of concentration.

42. Regardless of the aids and the extra work required by Taylor just to compensate for the deficits he has sustained, Taylor will always be behind in his development in relation to his peers.

43. Taylor sustained a total of \$2,569.63 in special damages relating to medical treatment and rehabilitation of injuries resulting from the collision.

44. As a result of the collision and his injuries, Daniel sustained general damages in the amount of \$10,000.00.

45. As a result of the collision, his injuries and the permanent scarring to his face, Jared sustained general damages in the amount of \$10,000.00.

46. As a result of the collision, his injuries and the impact those injuries will have on Taylor's future, Taylor sustained damages in the amount of \$350,000.00.

47. At the time of the collision, defendant Pickett had a blood alcohol level above the statutory limit.

48. Pickett failed the field sobriety tests administered on him by West Valley City Police Officer Julia Jorgensen.

49. Pickett was arrested by the West Valley City Police Department.

50. Pickett was transported to St. Marks Hospital, where a

blood sample drawn by hospital staff at 8.29 p.m. revealed Pickett's blood alcohol content to be blood alcohol concentration at time of accident to be between .12 and .14.

51. Pickett had at least one previous conviction for an of alcohol related traffic offense.

52. Defendant Pickett failed to appear for his deposition though he was specifically ordered to do so by the court on at least two occasions.

53. Defendant Pickett failed to appear for trial.

CONCLUSIONS OF LAW

1. Defendant Pickett was negligent when he, while under the influence of alcohol, allowed his vehicle to collide with the vehicle in which the Plaintiffs were riding on January 7, 1996.

2. Defendant Pickett's negligence was the actual and proximate cause of the personal injuries and property damage sustained by the plaintiffs.

3. The plaintiffs are entitled to judgment for the special damages they sustained as follows; Daniel Armstrong - for damages associated with personal injuries \$2884.97 and for damages associated with property damage \$29,931.38; Jared Armstrong \$2778.78; Taylor Armstrong - \$2569.63.

4. The plaintiffs are entitle to judgment for the general damages they sustained and that \$10,000.00 is a reasonable amount

of general damages to be awarded Daniel Armstrong; \$10,000.00 is a reasonable amount of general damages to be awarded Jared Armstrong; \$350,000.00 is a reasonable amount of general damages to be awarded Taylor Armstrong.

5. The actions defendant in driving under the influence of alcohol, again, demonstrated a willful or reckless disregard for the rights of the Plaintiffs entitling them to punitive damages.

6. The plaintiffs are entitled to punitive damages as follows; Daniel Armstrong - \$5000.00, Jared Armstrong - \$5000.00, Taylor Armstrong - \$10,000.00.

7. The plaintiffs are entitled to their costs in the matter.

DATED this 16 day of Jan



HOMER F. WILKINSON
DISTRICT JUDGE

Delivery Certificate

I hereby certify that a true and correct copy of the foregoing Findings of Fact & Conclusions of Law was hand delivered this 4th day of January, 2001.

Steve Smith
Scalley & Reading
261 East 300 South #200
Salt Lake City, Utah 84111

A handwritten signature, likely of Steve Smith, is written over a horizontal line. The signature is stylized, with a large 'S' and a 'Z' shape.

Tab J

Steven B. Smith, #5797
Darwin H. Bingham, #7810
SCALLEY & READING, P.C.
Attorneys for Defendant Glen C. Pickett
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870
Facsimile: (801) 531-7968

FILED
DISTRICT COURT
01 FEB -6 PM 1:07

-- K. G. Golepas

IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY, STATE OF UTAH

DANIEL J. ARMSTRONG, JARED
ARMSTRONG, TAYLOR ARMSTRONG
BY LORENE ARMSTRONG, his guardian
ad litem,

Plaintiffs,

vs.

GLEN C. PICKETT and JOHN DOES 1-5,

Defendants.

OBJECTION TO PLAINTIFFS'
PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW


Civil No. 980908711

Judge Homer Wilkinson

Defendant, Glenn C. Pickett, by and through counsel, hereby objects to Plaintiffs'
Proposed Findings of Fact 6, 8, 9, 10, 11, 12, 25, 26, 27, 30, 37, 39, 40, 42, 43, 44, 45, 46, and
49.

The Proposed Findings of Fact were not found by the Court nor supported by any
admissible evidence.

DATED this 6th day of February, 2001.


Steven B. Smith
Attorney for Defendant Glenn Pickett

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OBJECTION TO PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW was sent to the following at the address listed below, by depositing the same in the United States mail, postage pre-paid on this 6th day of February, 2001:

Robert H. Wilde, Esq.
WILDE & ASSOCIATES
935 East South Union Avenue
Suite D102
Midvale, Utah 84047

Miana L. Ray

Tab K

FILED DISTRICT COURT
Third Judicial District

JAN 16 2001

SALT LAKE COUNTY

By [Signature] Deputy Clerk

ROBERT H. WILDE #3466
ROBERT H. WILDE, ATTORNEY AT LAW, P.C.
Attorneys for Plaintiffs
935 East South Union Avenue Suite D-102
Midvale, Utah 84047
Telephone: (801) 255-4774

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----
DANIEL J. ARMSTRONG, JARED)
ARMSTRONG, TAYLOR ARMSTRONG BY) JUDGMENT
LORENE ARMSTRONG, HIS GUARDIAN)
AD LITEM)
Plaintiff,)
vs.)
GLEN C. PICKETT AND JOHN DOES)
1-5,)
Defendant.)
-----oo0oo-----

IMAGED

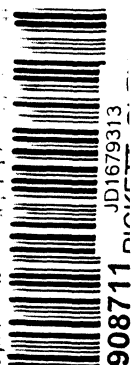
**ENTERED IN REGISTRY
OF JUDGMENTS**

DATE 01/19/01

Civil No. 980908711

Judge Homer F. Wilkinson

This matter came on regularly for trial before the court the 16th day of October, 2000 at the hour of 9:00 a.m. The plaintiff Dan Armstrong was present. Plaintiffs were represented by Robert H. Wilde. Defendant was represented by Steven B. Smith. Based upon his failure to appear for his deposition and plaintiffs' appropriate motion the court previously struck defendant's pleadings. The Court having heard the evidence, reviewed the memoranda filed, listened to the argument of counsel, having previously entered findings of fact and



conclusion of law and having good cause appearing therefore:

NOW THEREFORE IT HEREBY ORDERED ADJUDGED AND DECREED;

1. Judgment is hereby entered against defendant Glen Pickett C. Pickett, SSAN 529-11-5131, in favor of plaintiff Daniel J. Armstrong in the total amount of \$47,816.35 composed of the following;

a. Special damages associated with personal injuries in the amount of \$265.00 incurred to Western Emergency Physicians; \$295.75 incurred to Pioneer Valley Hospital; \$1071.22 incurred to LDS Hospital; \$180.00 incurred to A. Lee Bahr, M.D.; \$1073.00 for a prescribed chair;

b. Special damages associated with property damage in the amount of \$27,357.49 for total loss of vehicle; \$2573.89 for add-ons to the vehicle;

c. General damages of \$10,000.00; and

d. Punitive damages of \$5,000.00.

2. Judgment is hereby entered against defendant Glen Pickett C. Pickett, SSAN 529-11-5131, in favor of plaintiff Jared Armstrong in the total amount of \$17,778.78 composed of the following;

a. Special damages associated with personal injuries in the amount of \$2,778.78;

b. General damages of \$10,000.00; and

c. Punitive damages of \$5,000.00.

3. Judgment is hereby entered against defendant Glen Pickett C. Pickett, SSAN 529-11-5131, in favor of plaintiff Taylor Armstrong in the total amount of \$362,569.63 composed of the following;

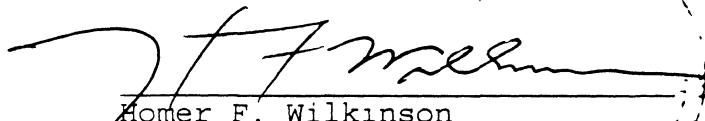
a. Special damages associated with personal injuries in the amount of \$405.28 incurred to Gold Cross Ambulance; \$265.00 incurred to Western Emergency Physicians; \$1,174.35 incurred to Pioneer Valley Hospital; \$400.00 incurred to Consultant Radiology; \$75.00 incurred to Jed Bindrup, M.D.; \$250.00 for Hooked on Phonics;

b. General damages of \$350,000.00; and

c. Punitive damages of \$10,000.00.

4. Plaintiffs are awarded taxable costs.

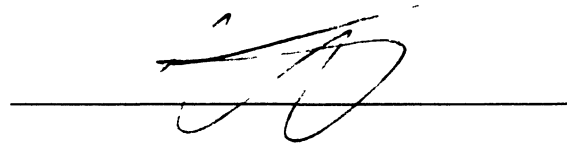
Dated this 16 day of Jan, ²⁰⁰¹~~2001~~


Homer F. Wilkinson
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Judgment was hand delivered this 4th day of January, 2001.

Steve Smith
Scalley & Reading
261 East 300 South #200
Salt Lake City, Utah 84111

A handwritten signature, appearing to be "SS", is written over a horizontal line.

Tab L

FILED DISTRICT COURT
Third Judicial District

FEB 15 2001

SALT LAKE COUNTY

By _____ Deputy Clerk

Steven B. Smith, #5797
Darwin H. Bingham, #7810
SCALLEY & READING, P.C.
Attorneys for Defendant Glen C. Pickett
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870
Facsimile: (801) 531-7968

**IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY, STATE OF UTAH**

DANIEL J. ARMSTRONG, JARED
ARMSTRONG, TAYLOR ARMSTRONG
BY LORENE ARMSTRONG, his guardian
ad litem,

Plaintiffs,

vs.

GLEN C. PICKETT and JOHN DOES 1-5,

Defendants.

NOTICE OF APPEAL

Civil No. 980908711

Judge Homer Wilkinson

Defendant Glen C. Pickett ("Pickett"), by and through counsel, hereby gives notice pursuant to Rule 3(a) Utah R. App. that he does hereby appeal to the Utah Supreme Court the following:


- a. The Court's Minute Entry filed in the above matter on or about January 2, 2001;
- b. The Court's Order signed and filed on January 16, 2001 granting Judgment to Daniel J. Armstrong for \$47,816.35, Jared Armstrong for \$17,778.78, and Taylor Armstrong for \$362,569.63;

- c. The Judgments entered and filed on or about January 19, 2001, against Glen Pickett in favor of Daniel J. Armstrong for \$47,816.35, Jared Armstrong for \$17,778.78, and Taylor Armstrong for \$362,569.63; and
- d. If entered, signed or if constituting any basis for the Order or Judgment identified above, the Findings of Fact and Conclusions of Law filed on January 16, 2001.

DATED this 15th day of February, 2001.

SCALLEY & READING, P.C.

Attorneys for Defendant/Appellant Glen C. Pickett


Steven B. Smith

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF APPEAL was sent to the following at the address listed below, by depositing the same in the United States mail, postage pre-paid on this 15th day of February, 2001:

Robert H. Wilde, Esq.
WILDE & ASSOCIATES
935 East South Union Avenue
Suite D102
Midvale, Utah 84047


Diana L. Ray